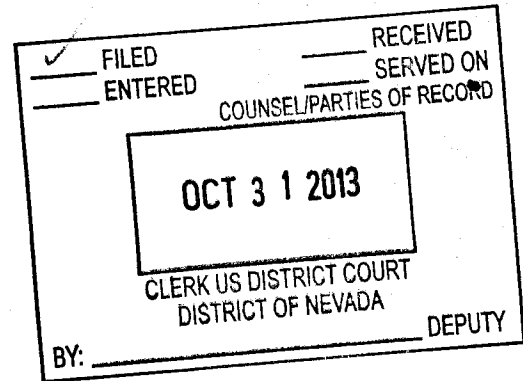


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UNITED STATES DISTRICT COURT

District of Nevada

AMENDED ORDER

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

Case No. 2:07-CV-892-RCJ-GWF-BASE
and
Case No. 3:07-CV-241-RCJ-GWF

3685 SAN FERNANDO LENDERS, LLC, *et al.*,

Plaintiffs,

v.

COMPASS USA SPE LLC, *et al.*,

Defendants.

**MEMORANDUM OPINION
AND ORDER REGARDING COMPASS
PARTNERS, LLC, COMPASS USA SPE,
LLC, AND DAVID BLATT PURSUANT TO
FED. R. CIV. P. 54(b)**

1 On September 6, 2012, the Court entered its Agreed Order Regarding Settlement And
2 Related Relief (the "Settlement Order"). (See Docket No. 1915 in Bankruptcy Case No. 09-32824-
3 RCJ) Pursuant to the Settlement Order, the claims that were or could be asserted between and
4 among Plaintiffs (and the other "B&B DL Settling Clients," as defined in the Settlement Order), on
5 the one hand, and Defendants Silar Advisors, LP, Silar Special Opportunities Fund, LP, and Asset
6 Resolution LLC solely in its capacity as debtor ("Asset Resolution") (together, "Silar"), the chapter
7 7 bankruptcy estate of Asset Resolution LLC (the "Estate"), and Boris Piskun ("Piskun"), on the
8 other (collectively, the "Parties"), were settled (the "Settlement"). (See *id.*) The Settlement Order
9 contemplates that a severed final judgment shall be entered in this action as to and among the
10 Parties. (See, e.g., *id.*, ¶ 122) The Court entered that severed final judgment as to and among the
11 Parties on October 31, 2012. (See 892 Doc. 2308)

12 In addition, the Court now enters the severed rulings included herein (the "Order") against
13 the remaining defendants in this action – Compass Partners, LLC and Compass USA SPE, LLC
14 (jointly and severally, "Compass") and David Blatt ("Blatt"). The Court enters the Order against
15 Compass and Blatt pursuant to Federal Rule of Civil Procedure 54(b) after finding that good cause
16 exists based on applicable law, and the pleadings, the evidence admitted at trial, and the orders and
17 other records entered in this case, in the "Asset Resolution Bankruptcy Cases" (jointly administered
18 in this Court as BK-S-09-32824-RCJ), and in numerous related proceedings (over all of which this
19 Court takes judicial notice).

20 BASED UPON THE FOREGOING, THE COURT NOW HEREBY ENTERS THIS
21 ORDER AND MAKES THE FOLLOWING FINDINGS OF FACT, LEGAL CONCLUSIONS,
22 AND DECLARATIONS:

23 I.

24 **RULE 54(B) CERTIFICATION**

25 1. The findings of fact, legal conclusions, and declarations in this Order are final as to
26 Compass and Blatt.

2. There is no just reason for delay in entry of this Order as to Compass and Blatt in light of, among other things, the merits, the interests of judicial administration, the equities, possible future developments in this case, delay, and expense.

II.

BACKGROUND

3. This case arises out of a series of related proceedings.

4. The first set of proceedings were chapter 11 bankruptcy cases in the United States Bankruptcy Court for the District of Nevada (the “Nevada Bankruptcy Court”) bearing primary Case No. BK-S-06-10725-LBR (the “USACM Bankruptcy Cases”). The USACM Bankruptcy Cases were prompted by the liquidity problems created by a massive, interstate ponzi-scheme in which insider managers and brokers of USA Commercial Mortgage Company and its affiliates (“USACM”) fraudulently induced thousands of persons across the United States (“Direct Lenders”) to invest hundreds of millions of dollars in fractionalized “direct lender” beneficial interests (“DL Interests”) in what were falsely represented to be fully-secured, short-term commercial real estate loans to independent borrowers and guarantors (the “USACM Loans”).

5. The proceedings mushroomed from the Nevada Bankruptcy Court to civil litigation in this Court as a result of the sale to Compass of, among other things, loan servicing agreements (the “LSAs”) and/or DL Interests held by USACM in sixty-five USACM Loans and/or related collateral properties over the objections of certain other Direct Lenders. Silar, acting for itself and/or as investment manager and as lead lender for certain investors and participants, advanced over \$50 million to Compass under a Master Repurchase Agreement (“MRA”) which Compass used to engage in the purchase and sale transaction with USACM. The civil litigation involved a series of actions ultimately consolidated in this action (the “892 Case”), including without limitation an action bearing Case No. 3-07-CV-241-RCJ-GWF (the “241 Case”).

6. The proceedings also included the Asset Resolution Bankruptcy Cases. Those cases were originally filed in New York, were transferred to Nevada, were fully withdrawn to this Court, and are now pending before this Article III Court.

1 7. In 2007, in this 892 Case, this Court exercised *in rem* jurisdiction over the USACM
2 Loans and the loan servicing relationship created by the LSAs, entered a Preliminary Injunction (the
3 “Preliminary Injunction”) (892 Doc. 199), and issued a series of interlocutory declarations
4 concerning the rights, obligations, fees, and alleged wrongful conduct of the post-USACM servicers
5 with respect to fifty two of the USACM Loans from February 16, 2007, through January 19, 2010
6 (the “Post-USACM/Pre-Termination Servicing Period”).

7 8. In that connection, in 2007, all persons or entities who were known to own or were
8 believed to own beneficial or DL Interests – *i.e.*, the Direct Lenders – in the fifty-two USACM
9 Loans which were the subject of this action were served a copy of the Preliminary Injunction and
10 notified of their right to appear herein. The Direct Lenders were also later served a copy of the
11 motion which led to the entry of the Settlement Order. The DL Interests in all of the USACM Loans
12 belong to one or more than one natural person within the meaning of Nev. Rev. Stat. 645B.340 et al.
13 The holders of more than fifty-one percent of the DL Interests in all of the USACM Loans except the
14 “Marlton I” loan consented to the terms of the Settlement Order in writing with respect to those
15 loans. This Order partially implements those terms. All Direct Lenders and their successors-in-
16 interest are therefore bound by the Court’s rulings in this Order based upon this Court’s *in rem*,
17 bankruptcy, diversity, and supplemental subject matter jurisdiction, and Nevada law.

18 9. On December 14, 2010, in this 892 Case, a nine-person jury awarded plaintiffs, and
19 against Compass and Blatt, a total of \$52,565.02 in compensatory damages, excluding attorneys’
20 fees and prejudgment interest. The jury also awarded plaintiffs a total of \$750,000 in punitive
21 damages from Compass, and a total of \$50,000 in punitive damages from Blatt. The jury’s damages
22 awards were based on: (i) its findings of liability for breach of contract, breaches of the implied
23 covenant of good faith and fair dealing in contract and in tort, breaches of fiduciary duties,
24 conversion, and civil conspiracy in connection with their servicing of certain USACM Loans
25 pursuant to the LSAs; and (ii) the Court’s pretrial determination that Compass and Blatt were in
26 default and, thus, liable as a matter of law based on those findings of liability.

27 10. On June 9, 2011, the Court heard oral argument on plaintiffs’ motions for attorneys’
28 fees and prejudgment interest, and defendants’ post-trial motions for judgment as a matter of law and

1 a new trial. This Order with respect to Compass and Blatt contains the Court's rulings as to those
2 matters.

3 II.

4 **MATTERS RELATING TO LOAN COLLECTIONS/WATERFALL**

5 11. The Court has entered a series of orders in this 892 Case and also in the Asset
6 Resolution Bankruptcy Cases which recognized that the Estate's servicing rights and duties under
7 the LSAs were terminated as of January 19, 2010, and recognized the assumption of servicing duties
8 by others. The Court also entered a series of orders mandating a procedure for resolving claims for
9 payment by persons or entities who provided goods or services in connection with the servicing of
10 the USACM Loans during the Post-USACM/Pre-termination Servicing Period. (See 892 Case Doc.
11 1630; AR Bk Doc. Nos. 356, 387, & 989; AR Bk January 19, 2010 Transcript at 57)

12 A. **Claims And Parties**

13 12. On August 29, 2007, this Court affirmed the Nevada Bankruptcy Court's order
14 confirming the USACM Plan under chapter 11 of the Bankruptcy Code over the objections of certain
15 Direct Lenders. In that decision, among other things, this Court ruled that the "Bankruptcy Court's
16 confirmation order does not purport to interpret the LSAs to define Compass' contractual rights, or
17 lack thereof . . . [under the LSAs]," and that "[r]esolution of potential, future disputes regarding
18 Compass' rights under the LSAs are a matter of contract interpretation" (Doc. 160 (Opinion) at
19 27/lines 3-8) Compass received notice of the appeal and opted not to appear and assert a position
20 contrary to the ruling ultimately entered by this Court. This 892 Case is the "future dispute"
21 anticipated by the Court's opinion.

22 13. Among other things, Plaintiffs in the 892 Case sought to terminate Compass (and
23 later Asset Resolution) as servicers for the USACM Loans, sought declarations concerning the
24 measurement, timing, and amount of default-fee compensation that was due to be paid to those
25 servicers under the LSAs, and sought an accounting of loan collections and damages for "loan
26 servicer misconduct" based on those declarations.

27 14. The original plaintiffs in the 892 Case were limited liability companies ("Plaintiff
28 LLCs") representing greater than 51 percent of the DL Interests in fifty two of the USACM Loans

1 which were the subject of USACM's sale to Compass. The remaining purchased USACM Loans
2 were either owned entirely by USACM (and then Compass) or were resolved without controversy.
3 Although the Plaintiff LLCs were eventually dismissed from the 892 Case, the case continued to be
4 prosecuted by and against several "loan captains" and "key people" associated with the fifty-two
5 USACM Loans at issue in the litigation. (832 Doc. 7 at 13-15; 09-15632 Transcript at 11/line 4)

6 15. This Court has recognized that the LSAs and the Nevada statutes and regulations
7 governing the LSAs created co-ownership interests in the same subject matter and a substantial
8 identity, community, or mutuality of interests among all of the Direct Lenders and between the
9 Direct Lenders and their servicers under the LSAs with respect to each USACM Loan which was the
10 subject of the USACM sale. (892 Doc. 1599 (Order) at 6) The LSAs at issue in this 892 Case, and
11 the legal and factual issues involving collections and the measurement and timing of payment of
12 base servicing and other fees and servicer advances thereunder, were and are common to all Direct
13 Lenders.

14 16. The claims and defenses asserted with respect to the issues under the LSAs in this
15 892 Case were and are typical of those which would be asserted by all Direct Lenders.

16 17. The Direct Lenders vigorously presented the issues in connection with the
17 interpretation of the LSAs in this 892 Case. The loan servicers under the LSAs also acted or refused
18 to act on grounds that applied generally to all of the Direct Lenders in the USACM Loans.

19 18. Inconsistent or varying adjudications with respect to the interpretation of the LSAs
20 would establish incompatible standards of conduct for the loan servicers under the LSAs with
21 respect to the same USACM Loan.

22 19. For these reasons and others, the Court protected the interests of all parties to all of
23 the LSAs by entering the Preliminary Injunction (which, as has been noted, was the result of a
24 consolidation of various pending cases, including a core adversary proceeding brought by Compass
25 to enforce the USACM Plan and related orders for which the automatic reference was withdrawn to
26 this Court).

1 **B. Preliminary Injunction/*In Rem* Jurisdiction**

2 20. The Preliminary Injunction preserved the *status quo* pending adjudication of the
3 issues raised in this consolidated 892 Case and applied to all Direct Lenders through the Court's
4 exercise of *in rem* jurisdiction "over the [USACM] Loans and LSAs relating thereto." (892 Doc.
5 199) *See Morgan Stanley Mortgage Capital, Inc. v. Ins. Commission of State of Cal.*, 18 F.3d 790
6 (9th Cir. 1984).

7 21. Paragraph 14 of the Preliminary Injunction expressly required service of the
8 Preliminary Injunction on all Direct Lenders in the USACM Loans by mail and further provided that
9 any Direct Lender who was not a named plaintiff in the 892 Case "must file a written objection with
10 this Court stating the specific basis for such objection within fifteen (15) days of the date hereof, or
11 such Direct Lender shall otherwise be bound by the terms hereof" (892 Doc. 199 at 12, ¶ 14)

12 22. As noted above, the Preliminary Injunction was mailed to all Direct Lenders in the
13 USACM Loans. No Direct Lenders filed an objection to the relief set forth in the Preliminary
14 Injunction. Nor did any named party in the 892 Case or any other Direct Lenders appeal issuance of
15 the Preliminary Injunction.

16 23. The Ninth Circuit Court of Appeals has affirmed this Court's amendment of the
17 Preliminary Injunction to add Asset Resolution as the replacement servicer to Compass. (892 Doc.
18 1877) *See Cangelosi v. Silar Advisors, LP (In re USA Commer. Mortg. Co.)*, 397 F. App'x 300, 306
19 (9th Cir. 2010) (unpublished).

20 24. The Ninth Circuit Court of Appeals has also affirmed this Court's application of the
21 termination provision in the Preliminary Injunction as of January 10, 2010 to all of the LSAs
22 purchased by Compass as to all Direct Lenders. *See 3685 San Fernando Lenders LLC v. Cross*
23 *Equities Partners, LLC, et al.*, No. 09-16897, Doc 88-1 at 10-13 (9/19/11).

24 25. The Ninth Circuit has also ruled that, "to the extent any party would argue that the
25 Preliminary Injunction improperly affected their underlying rights in the LSAs, . . . such argument
26 [w]as waived because no party . . . appealed the entry of the original preliminary injunction." *See*
27 *3685 San Fernando Lenders LLC v. Cross Equities Partners, LLC, et al.*, No. 09-16897, Doc 88-1 at
28 12, n.4 (9/19/11).

1 26. The Preliminary Injunction was therefore binding on all parties to the USACM Loans
2 servicing relationship from November 2007 onward.

3 **C. Servicing And Collections Under The Preliminary Injunction**

4 27. The Preliminary Injunction was entered in part in response to motions initially filed
5 by Compass which sought to maintain Compass' position as servicer during the Post-USACM/Pre-
6 Termination Servicing Period. (10-725 Doc. 3773)

7 28. The Preliminary Injunction provided the "exclusive authority of Compass to act
8 directly on behalf of the Direct Lenders as servicer" for the loans *pendente lite* and provided a
9 mechanism for terminating the servicing relationship by motion. (892 Doc. 199 at 4, ¶¶ 1 & 2, and
10 at 9, ¶ 8)

11 29. Compass acted as the servicer of the USACM Loans from February 16, 2007 (the
12 effective date of the sale by USACM) through September 26, 2008 (when Asset Resolution
13 terminated Compass' rights under the MRA with respect to the LSAs and the USACM DL Interests).
14 During those periods, the Direct Lenders sought in the 892 Case to terminate that servicing
15 relationship in order to obtain day-to-day control over the management and collection of the
16 USACM Loans and the protection of the underlying collateral (through, for example, payment of
17 taxes, maintenance costs, and the like).

18 30. This Court has ruled that Silar was vicariously liable to certain Direct Lenders on
19 certain USACM Loans for acts by Compass relating to the servicing of USACM Loans because the
20 MRA established a principal-agency relationship between Silar and Compass with respect to those
21 matters. Although the MRA cannot shield Silar from *respondeat superior* liability for servicer-
22 related conduct of Compass, Silar is not vicariously liable for any acts or omissions of Compass
23 which either took place before the MRA was executed (February 16, 2007), which were performed
24 outside the scope of the agency under the MRA, and/or which were undertaken for Compass' own
25 account. This means, for example, that Silar is not liable for purchases of DL Interests by Compass
26 or its affiliates or for any debts incurred by Compass to third parties hired or retained by Compass to
27 assist Compass in the performance of Compass's duties to Silar or the Direct Lenders.

28

1 31. As this Court has ruled, as a result of the assignment by Silar to Asset Resolution and
2 the termination of Compass' rights under the MRA and related agreements by Asset Resolution as of
3 September 26, 2008, as well as the Court's ensuing order joining Asset Resolution as a party to the
4 892 Case and the Preliminary Injunction: (a) Asset Resolution became the holder of the servicing
5 rights and the DL Interests originally received by Compass through the purchase and sale transaction
6 with the USACM estates; and (b) Asset Resolution, not Silar, became the owner of the servicing
7 rights (and related receivables accrued thereunder) for the USACM Loans from September 26, 2008
8 through January 19, 2010.

9 **D. The Preliminary Injunction "Waterfall" Procedure**

10 32. The Preliminary Injunction set forth detailed procedures for handling loan collections
11 when there was a payment in full, a "consensual discounted payoff," or a "non-consensual
12 discounted payment." (892 Doc. 199 at 6-8, ¶¶ 4-7)

13 33. The segregation of collections into various categories: (a) allowed Compass and
14 Asset Resolution to withdraw servicer advances and base servicing fees chargeable against the
15 accounts of all Direct Lenders in the USACM Loans without further Court order; (b) allowed
16 Compass and Asset Resolution to withdraw payments for all "Compass Fees" (even default interest,
17 late fees, and other non-base-servicing fees) chargeable against their own DL Interests AND against
18 the DL Interests of any other Direct Lenders who did not object per the LSAs to the treatment
19 proposed by Compass or Asset Resolution; (c) required Compass and Asset Resolution to set aside
20 the default interest, late fees, and other non-base servicing fees which were in "dispute" because the
21 Direct Lenders in question did not consent to the payment of such fees as proposed by the loan
22 servicer ("Disputed Fees"); and (d) allowed Compass and Asset Resolution to distribute payments to
23 themselves and other Direct Lenders for their DL Interests.

24 34. On November 15, 2007, Compass filed an accounting of loan collections and
25 disbursements with the Court as required by section 9 of the Preliminary Injunction (the "Compass
26 Accounting"). (892 Doc. 216) No objections to that accounting were asserted by any Direct
27 Lenders. Section 6(d) of the Preliminary Injunction allowed Compass and Asset Resolution to
28 receive fees with respect to DL Interests they owned and/or with respect to DL Interests held by

1 persons who did not object to paying such fees. Also, with the exception of the Gess Loan (where
2 the Court directly ruled upon the allocation of cash from the liquidation of that loan), no Direct
3 Lenders asserted any objections in this Court to any base servicing fees taken by Compass or Asset
4 Resolution under the Preliminary Injunction and/or the LSAs. In fact, the original Complaint filed
5 by Plaintiffs in the 892 Case acknowledged that “[p]ursuant to Section 5 of the Loan Servicing
6 Agreement, the loan servicer had the right to retain, as compensation for servicing loans a servicing
7 fee varying between 1-3% per annum.” (See 241 Doc. 1, paragraph 56) This allegation was
8 essentially reiterated in paragraph 45 of the Third Amended Complaint filed in the 892 Case. (892
9 Doc. 1499)

10 35. Compass and Asset Resolution (respectively) – and not Silar – were responsible for
11 retaining any base servicing fees and other payments from USACM Loan collections during the
12 Post-USACM/Pre-Termination Servicing Period.

13 III.

14 **DEFENDANTS’ RENEWED MOTIONS FOR JUDGMENT AS A MATTER OF LAW**

15 A. **Relevant Legal Standard**

16 In reviewing a renewed motion for judgment as a matter of law under Federal Rule of Civil
17 Procedure 50(b), the Court “may not make credibility determinations or weigh the evidence,” but
18 “must view the evidence in the light most favorable to the nonmoving party . . . and draw all
19 reasonable inferences in that party’s favor.” See *E.E.O.C. v. Go Daddy Software, Inc.*, 581 F.3d 951,
20 961 (9th Cir. 2009) (internal quotations and citations omitted). “The test applied is whether the
21 evidence permits only one reasonable conclusion, and that conclusion is contrary to the jury’s
22 verdict.” See *id.* (internal quotations and citation omitted). The Court must review the jury’s verdict
23 for substantial evidence and uphold it if “evidence adequate to support the jury’s conclusion [exists],
24 even if it is also possible to draw a contrary conclusion.” See *id.* at 961, 963 (internal quotations and
25 citation omitted).

26 A renewed motion for judgment as a matter of law under Rule 50(b) “is limited to the
27 grounds asserted in the pre-deliberation Rule 50(a) motion.” See *id.* at 961. Thus, a Rule 50(b)
28 motion cannot properly raise arguments that were not raised in the pre-verdict Rule 50(a) motion.

1 *See id.*; *see also Tortu v. Las Vegas Metro. Police Dep't*, 556 F.3d 1075, 1082 (9th Cir. 2009)
2 (“[W]e strictly construe the procedural requirement of filing a Rule 50(a) motion before filing a Rule
3 50(b) motion.”) (precluding review of Rule 50(b) motion due to party’s failure to file a Rule 50(a)
4 motion; noting trial brief and motion for summary judgment were insufficient to constitute a proper
5 Rule 50(a) motion).

6 Nevertheless, the Court may review a jury’s verdict based on arguments made in a Rule
7 50(b) motion that were not previously raised in a Rule 50(a) motion for plain error. *See E.E.O.C.*,
8 581 F.3d at 961. In that event, reversal is warranted “only if such plain error would result in a
9 manifest miscarriage of justice.” *See id.* (internal quotations and citations omitted). Plain error
10 review “permits only extraordinarily deferential review that is limited to whether there was *any*
11 evidence to support the jury’s verdict.” *See id.* at 961-62 (internal quotations and citations omitted;
12 emphasis in original).

13 **B. Substantial Evidence Supports Compass’s And Blatt’s Liability For Conversion.**

14 Under Nevada law, conversion occurs “when a tortfeasor takes possession, sells the property,
15 and pockets the proceeds of the sale,” or makes an unjustified claim of title to property that causes
16 actual interference with the owner’s rights of possession therein. *See Scaffidi v. United Nissan*, 425
17 F. Supp. 2d 1159, 1168 (D. Nev. 2005). Moreover, “conversion is an act of general intent, which
18 does not require wrongful intent and is not excused by care, good faith, or lack of knowledge.” *See*
19 *Evans v. Dean Witter Reynolds, Inc.*, 5 P.3d 1043, 1048 (Nev. 2000). Thus, the mere return of
20 converted property does not eliminate one’s liability for conversion. *See id.* at 1049.

21 Compass and Blatt contend that their retention of proceeds from USACM Loans that were
22 later determined by the Court to be owed to the Direct Lenders, not the loan servicers under the
23 LSAs, does not constitute conversion. Even assuming *arguendo* that Compass and Blatt have
24 properly characterized the trial evidence in this regard (which they have not, *see infra* section
25 III.C.2), their contention is belied by Nevada law. *See Evans*, 5 P.3d at 1048-49. Nor is their
26 contention supported by *Wantz v. Redfield*, 326 P.2d 413, 414 (Nev. 1958), on which they rely.
27 Contrary to their contention, *Wantz* does not stand for the proposition that conversion occurs only
28 upon the taking of “specifically identifiable, hard currency.” Rather, *Wantz* confirms that “no

1 clearer example” of conversion is when one retains the proceeds from the sale of another’s property.
2 See *id.* That is precisely what plaintiffs, by substantial evidence, proved occurred in connection with
3 the Bay Pompano, Shamrock, and Standard Property Loans. See *infra* section III.C.2, D, E, F.1.

4 The Court also rejects Blatt’s contention that he cannot be held liable for conversion merely
5 because he was not specifically named as a defendant on that claim in the Second Amended
6 Complaint. See FED. R. CIV. P. 54(c) (“Every other final judgment [other than a default judgment]
7 should grant the relief to which each party is entitled, even if the party has not demanded that relief
8 in its pleadings.”).¹ As a managing member of Compass, Blatt is personally liable for engaging in
9 the conversion that plaintiffs proved was committed by Compass. See *Pocahontas First Corp. v.*
10 *Venture Planning Group, Inc.*, 572 F. Supp. 503, 508 (D. Nev. 1983) (“There is no doubt that an
11 individual who commits a tort while acting in the capacity of a corporate officer may be held
12 personally liable.”); *Marino v. Cross Country Bank*, No. C.A.02-65-GMS, 2003 WL 503257, at *7
13 (D. Del. Feb. 14, 2003) (“Corporate officers are liable for their tortious conduct even if they were
14 acting officially for the corporation in committing the tort. A corporate officer can be held
15 personally liable for the torts he commits and cannot shield himself behind a corporation when he is
16 a participant.”) (applying Delaware law; internal quotations and citation omitted). Accordingly, the
17 Court denies Compass’s and Blatt’s Rule 50(b) motions with respect to plaintiffs’ conversion claim.

18
19
20
21 ¹ Although Compass and Blatt were in default, the Court permitted them to appear at trial and defend
22 against plaintiffs’ request for damages. Because their default was as to Plaintiffs’ Second, not Third,
23 Amended Complaint, the following ten plaintiffs who were first added as party plaintiffs in the Third
24 Amended Complaint are not included in the damages awarded by the jury against Compass and
25 Blatt. Those ten plaintiffs are: Tony Chaudry (Joy Investment, a Nevada Corporation); Kevin Olsen
26 (Universal Management, a Nevada Corporation); Robin Graham (Robin B. Graham & Celia Allen-
27 Graham Trustees of the Graham Family Trust dated 10/26/78); Ed Schoonover (Edward L.
28 Schoonover & Susan A. Schoonover Co-Trustees of The Schoonover Family Trust dated 2/23/04);
Cyril Tammadge (Preswick Corp., a Nevada Corporation); Stan Tara (Sovereign Capital Advisors,
LLC, a Nevada limited liability company); Carol Kesler (Carol Mortenson Trustee of the Carol
Mortensen Family Trust dated 9/9/90); Christina Knoles (G. Robert Knoles and Christina G. Knoles
husband and wife as joint tenants with rights of survivorship); Daniel Newman (Daniel D. Newman
Trustee of the Daniel D. Newman Trust dated 11/1/92); and Ken Zawacki (Zawacki, a California
LLC).

1 **C. Substantial Evidence Supports Compass's And Blatt's Liability For Tortious Breach Of**
2 **The Implied Covenant Of Good Faith And Fair Dealing.**

3 Compass and Blatt argue that they are entitled to judgment as a matter of law on plaintiffs'
4 claim for tortious breach of the implied covenant of good faith and fair dealing because: (i) a
5 required "special relationship" did not exist between the parties; and (ii) the "genuine dispute
6 doctrine" applies to defendants' actions. The Court concludes that Compass's and Blatt's arguments
7 are without merit.

8 **1. A special relationship existed between the parties.**

9 The LSAs give rise to an implied covenant of good faith and fair dealing in tort. The LSAs
10 (as well as the documentation concerning the USACM Loans) were expressly governed by Nevada
11 law. Thus, Compass and Blatt were obligated to comply with Nevada law pertaining to the servicing
12 of the USACM Loans. Nevada law precluded Compass and Blatt from placing their financial
13 interests above those of the Direct Lenders, for whom they were servicing the USACM Loans
14 pursuant to the LSAs.

15 The LSAs did not create a general fiduciary duty for the loan servicers under the LSAs;
16 rather, the LSAs created a duty to exercise reasonable business judgment. The LSAs do not describe
17 the relationship between the parties as fiduciary in nature, but instead incorporate a reasonable
18 business person standard. Where a borrower defaults in making payments under a promissory note,
19 the LSAs provide:

20 In the event the Borrower fails to make payment to USA[CM] as
21 required by the terms of the note, USA[CM] will take steps to collect
22 the payment including, but not limited to delivering default notices,
23 commencing and pursuing foreclosure procedures, and obtaining
24 representation for Lender in litigation and bankruptcy proceedings as
deemed necessary or appropriate by USA[CM] in its business
judgment to fully protect the interests of the Lender, and of all Lenders
in the loan.

25 Where, as here, a loan servicer is obligated to perform under a contract using its reasonable
26 business judgment, a fiduciary duty is not created. *See First Citizens Fed. Sav. & Loan Ass'n v.*
27 *Worthen Bank & Trust Co.*, 919 F.2d 510, 514 (9th Cir 1990) (no fiduciary duty where parties are
28 obligated to make decisions "in good faith and in a reasonable manner" because "these provisions

1 are more indicative of a typical business relationship among equally sophisticated entities dealing at
2 arm's length than of a fiduciary relationship"). An agent must expressly assume fiduciary
3 obligations and such an assumption must be the intent of the parties. *See So. Pac. Thrift & Loan*
4 *Ass'n v. Sav. Ass'n Mortgage Co.*, 70 Cal. App. 4th 634 (Cal. Ct. App. 1999) (holding that the loan
5 servicer did not act as fiduciary to lenders except where it expressly agreed to assume fiduciary
6 duties to lenders). Thus, because the parties did not express their mutual intent for the loan servicer
7 under the LSAs to assume fiduciary duties, the LSAs imposed on the loan servicer only an agency
8 responsibility to exercise reasonable business judgment on behalf of the Direct Lenders in
9 connection with its servicing of the USACM Loans.

10 Notwithstanding the foregoing, however, under Nevada law Compass and Blatt were agents
11 of, and therefore owed fiduciary obligations to, the Direct Lenders when handling funds and taking
12 title to real property received on account of the Direct Lenders. *See, e.g., Young v. Nev. Title Co.*,
13 744 P.2d 902, 903 (Nev. 1987) (affirming determinations that mortgage broker who failed to give
14 lenders the payoffs from individual borrowers' loans was an agent); *LeMon v. Landers*, 402 P.2d
15 648, 649 (Nev. 1965) ("An agent . . . owes to the principal the highest duty of fidelity, loyalty and
16 honesty in the performance of the duties by the agent on behalf of the principal."); *Jory v. Bennight*,
17 542 P.2d 1400, 1403 (Nev. 1975) ("[H]is fiduciary duties . . . include obligations of the utmost good
18 faith, diligence, loyalty, fair dealing, and disclosure of material facts."). Indeed, under sections
19 654A.020 and 645A.041 of the Nevada Revised Statutes, Compass, Blatt, and their contracted sub-
20 servicers were escrow agents under Nevada law that were required to be licensed and bonded
21 thereunder to collect payments on the USACM Loans for the benefit of the Direct Lenders.

22 Moreover, because Compass and Blatt had a fiduciary relationship with the Direct Lenders
23 when handling funds and taking title to real property received on account of the Direct Lenders,
24 Nevada law precluded Compass and Blatt from engaging in grievous and perfidious misconduct
25 pursuant to the implied covenant of good faith and fair dealing in the LSAs. *See Allstate Ins. Co. v.*
26 *Miller*, 212 P.3d 318, 324-26 (Nev. 2009) ("A violation of the covenant [the implied covenant of
27 good faith and fair dealing] gives rise to a bad-faith tort claim [against insurers]. . . . This duty to
28 adequately inform an insured arises from the special relationship between the insured and the

1 insurer, which is similar to a fiduciary relationship. Although this court has refused to adopt a
2 standard where an insurance company must place the insured's interests over the company's
3 interests, the nature of the relationship requires that the insurer adequately protect the insured's
4 interest. Thus, at a minimum, an insurer must equally consider the insured's interests and its own.")
5 (internal citations omitted); *Ins. Co. of the W. v. Gibson Tile Co.*, 134 P.3d 698, 702-03 (Nev. 2006)
6 ("Although every contract contains an implied covenant of good faith and fair dealing, an action in
7 tort for breach of the covenant arises only 'in rare and exceptional cases' when there is a special
8 relationship between the victim and tortfeasor. A special relationship is 'characterized by elements
9 of public interest, adhesion, and fiduciary responsibility.' . . . We have recognized that in these
10 situations involving an element of reliance, there is a need to 'protect the weak from the insults of
11 the stronger' that is not adequately met by ordinary contract damages. In addition, we have extended
12 the tort remedy to certain situations in which one party holds 'vastly superior bargaining power.' . . .
13 The insurer-insured relationship is fiduciary in nature, and a jury's finding of a breach of fiduciary
14 duty may support the finding of bad faith. Misrepresenting or concealing facts to gain an advantage
15 over the insured constitutes a breach of fiduciary responsibility.") (internal citations omitted);
16 *LeMon*, 402 P.2d at 649 ("The object of the agency is to ensure the transaction of the business of the
17 principal to his best advantage. An agent will not be permitted to pervert his authority to his own
18 personal gain in severe hostility to the interests of his principal.").

19 Thus, Nevada law precluded Compass and Blatt from elevating their interests above the
20 interests of the Direct Lenders for whom they were servicing the USACM Loans pursuant to the
21 LSAs. In other words, Compass and Blatt could not seek to retain default interest and late charges as
22 loan servicing compensation from collected funds in derogation of the right of the Direct Lenders to
23 be repaid first their principal and all accrued regular interest due and owing under the USACM
24 Loans. That is because a special relationship existed between the loan servicer under the LSAs and
25 the Direct Lenders, for the following two reasons: (i) although the loan servicing relationship
26 between the parties generally gave rise to contractual duties, Compass and Blatt also owed fiduciary
27 duties to the Direct Lenders when handling funds or holding title to real property on their behalf; and
28 (ii) because each of the USACM Loans could have hundreds of different Direct Lenders as investors,

1 Compass and Blatt were the only ones who could preserve, protect, and collect the Direct Lenders'
2 interests in the USACM Loans and the underlying collateral. Accordingly, just as Nevada law
3 recognizes that a special relationship exists between an insurer and an insured, so too does Nevada
4 law provide that a special relationship existed between the loan servicers under the LSAs and the
5 Direct Lenders.²

6 **2. Compass and Blatt acted in bad faith.**

7 The Court finds that plaintiffs presented substantial evidence that Compass's and Blatt's
8 actions in connection with the Bay Pompano, Shamrock, and Standard Property Loans were not
9 reasonable, but undertaken in bad faith. Thus, notwithstanding Compass's and Blatt's
10 characterizations of the evidence as not supporting the jury's verdict, the Court denies their Rule
11 50(b) motions with respect to plaintiffs' claim for violation of the implied covenant of good faith and
12 fair dealing in tort. *See E.E.O.C.*, 581 F.3d at 961, 963; *see also Albert H. Wohlers & Co. v. Bartgis*,
13 969 P.2d 949, 956-57 (Nev. 1999) (affirming jury's finding of bad faith because substantial evidence
14 of bad faith was presented to the jury; concluding that the insurer's "absurd interpretation" of the
15 insurance contract was unreasonable and did not shelter it from bad faith liability).

16 **a. The Bay Pompano and Shamrock Loans.**

17 Compass and Blatt argue that they acted reasonably in relying on the advice of counsel, USA
18 Commercial's chapter 11 plan and "Confirmation Order," the language of the LSAs, and the lack of
19 any challenge to their servicing fee calculations in taking millions of dollars as loan servicing
20 compensation in connection with the Bay Pompano and Shamrock Loans. Defendants' arguments
21 misstate the trial evidence on which the jury awarded damages to plaintiffs. Specifically:

- 22 • plaintiffs' Shamrock damages claim was based on the \$2.3 million in net sale
23 proceeds – which amount was derived by first deducting the servicing fees
24 and servicer advances actually taken by Compass – that were not properly
25

26
27 ² On May 26, 2009, the Nevada Legislature enacted a new statute that expressly imposes a "fiduciary
28 obligation" on Nevada licensed mortgage brokers. *See* NEV. REV. STAT. § 645B.0147. That statute
defines a "fiduciary obligation" to mean "a duty of good faith and fair dealing." *See id.*,
§ 645B.0147(3).

1 accounted for and paid to the Direct Lenders, including plaintiffs (Trial Tr. at
2 367:10-370:16; Trial Exs. 171, 302A, 2759); and

- 3 • plaintiffs' Bay Pompano damages claim was based on Compass's failure, in
4 early April 2007, to disclose to the Direct Lenders, including plaintiffs, and
5 accept the borrower's proposal to repay the unpaid principal balance and all
6 due and owing accrued regular interest because that offer waived the
7 repayment of substantial default interest and late fees, as a result of which
8 plaintiffs were damaged in the amount of their fractional share of the servicing
9 fee and servicer advances that Compass thereafter purported to accrue (Trial
10 Tr. at 728:15-751:18; Trial Exs. 85, 94, 149, 168, 286, 287).

11 Thus, the Court finds that plaintiffs presented substantial evidence of Compass's and Blatt's bad
12 faith in taking the Shamrock sale proceeds, and in not resolving the Bay Pompano Loan in April
13 2007.

14 **b. The Standard Property Loan.**

15 Compass and Blatt maintain that they acted reasonably in taking over \$870,000 as default
16 interest and late fees from the borrower's payoff of the Standard Property Loan because: (i) the
17 Court did not decide until trial that all due and owing accrued regular interest (as well as the unpaid
18 principal balance) had to be repaid first before defendants could collect default interest and late fees;
19 and (ii) Compass relied on the advice of counsel in taking default interest and late fees in priority to
20 the repayment of the Direct Lenders' unpaid principal balance and due and owing accrued regular
21 interest. Plaintiffs, however, proved at trial that Compass and Blatt failed to disclose to plaintiffs
22 that:

- 23 • the Standard Property borrower was initially willing to repay 100% of the
24 unpaid principal balance of the Loan, even though Compass sought the Direct
25 Lenders' consent to accept a discounted payoff of only 90% of the unpaid
26 principal balance;

- 1 • the Standard Property borrower later agreed to repay 100% of the unpaid
2 principal balance of the Loan, plus an additional \$870,000 in purported
3 default interest and late fees; and
- 4 • the Standard Property borrower would pay an additional \$870,000 to resolve
5 the Loan, even though Compass agreed as a Standard Property Direct Lender
6 to accept repayment of only 100% of the unpaid principal balance and to
7 waive repayment of any due and owing regular accrued interest.

8 (Trial Tr. at 1232:6-1267:25, 1283:7-1286:8, 1312:21-1315:6, 1649:2-1653:2; Trial Exs. 42, 70, 73,
9 76, 77, 145, 160, 232)

10 Plaintiffs also proved at trial that Compass and Blatt acted contrary to the terms of the
11 Standard Property promissory note, which first required the repayment of all due and owing accrued
12 regular interest absent the Direct Lenders' informed consent to allocate the borrower's payments to
13 the unpaid principal balance. (Trial Tr. at 1218:15-1219:15, 1448:6-1449:4; Trial Ex. 27) Thus,
14 plaintiffs presented substantial evidence of Compass's and Blatt's bad faith failure to disclose
15 material information to plaintiffs in connection with the Standard Property Loan. It is, therefore,
16 irrelevant whether Compass and Blatt otherwise purported to act reasonably in taking default interest
17 and late fees in priority to the repayment of due and owing accrued regular interest in March 2007.
18 Accordingly, the Court denies Compass's and Blatt's Rule 50(b) motions with respect to plaintiffs'
19 claim for tortious breach of the implied covenant of good faith and fair dealing.

20 **D. Substantial Evidence Supports Compass's And Blatt's Liability For Breaching Their**
21 **Fiduciary Duties.**

22 The Court rejects Compass's and Blatt's contention that they are entitled to judgment as a
23 matter of law on plaintiffs' breach of fiduciary duty claim based on their purported good faith in
24 taking certain USACM Loan proceeds as default interest, late fees, and servicing fees. As
25 previously discussed, plaintiffs presented substantial evidence of Compass's and Blatt's failure to
26 make material disclosures and proper accountings to the Direct Lenders in connection with the Bay
27 Pompano, Shamrock, and Standard Property Loans. *See supra* section III.C.2. The Court finds that
28 those failures were not a "good faith allocation of amounts collected from a borrower," as Compass

1 and Blatt improperly contend. Rather, as the jury was justifiably permitted to conclude, they
2 constituted reprehensible breaches of fiduciary duties by Compass and Blatt. *See LeMon*, 402 P.2d
3 at 649 (“An agent . . . owes to the principal the highest duty of fidelity, loyalty and honesty in the
4 performance of the duties by the agent on behalf of the principal.”); *Jory*, 542 P.2d at 1403 (“[H]is
5 fiduciary duties . . . include obligations of the utmost good faith, diligence, loyalty, fair dealing, and
6 disclosure of material facts.”).³

7 The Court also rejects Blatt’s contention that they are entitled to judgment as a matter of law
8 on plaintiffs’ breach of fiduciary duty claim because plaintiffs purportedly failed to prove that he
9 misappropriated USACM Loan proceeds in his individual capacity, as opposed to in his capacity as
10 an agent for Compass. As previously indicated, Blatt, as a managing member of Compass, is
11 personally liable for engaging in Compass’s breaches of fiduciary duties, regardless of whether he
12 actually realized any personal gain from his misconduct. *See Jory*, 542 P.2d at 1403 (“He remained
13 a real estate broker, although licensed to serve clients on behalf of a corporation. Like any broker,
14 Jory had fiduciary duties to those he had undertaken to serve in a professional capacity
15 Therefore if Jory, through his own professional misconduct or neglect, breached fiduciary
16 obligations owed to Bennight, he is personally responsible for consequent harm, and operating in the
17 corporate form does not insulate him from such liability.”); *Pocahontas First Corp.*, 572 F. Supp. at
18 508; *Marino*, 2003 WL 503257, at *7. The Court finds that plaintiffs presented substantial evidence
19 of Blatt’s involvement in Compass’s failure to: (i) account for and pay significant proceeds from the
20 Shamrock and Standard Property Loans to plaintiffs; and (ii) disclose the Bay Pompano borrower’s
21 settlement proposal in April 2007. (Trial Tr. at 367:10-370:16, 728:15-751:18, 1232:6-1267:25,
22 1283:7-1286:8, 1312:21-1315:6, 1649:2-1653:2, 2127:2-2129:7, 2661:2-2676:2, 2699:10-2670:12,
23 2937:2-23; Trial Exs. 42, 70, 73, 76, 77, 85, 94, 103, 145, 149, 160, 168, 171, 232, 286, 287, 302A,
24 2759, 2760) Indeed, Compass and Blatt do not dispute that such substantial evidence exists with
25 respect to Compass’s breaches of fiduciary duties. (Doc. #2045 at 9-14) Accordingly, the Court
26

27
28 ³ The jury also found Compass and Blatt liable for breaching their fiduciary duties to plaintiffs with
respect to the Gess and Gramercy Loans, but awarded no damages to plaintiffs for that misconduct.
(Doc. #2010 at 2, 5).

1 denies Compass's and Blatt's Rule 50(b) motions with respect to plaintiffs' breach of fiduciary duty
2 claim.

3 **E. Substantial Evidence Supports Compass's And Blatt's Liability For Civil Conspiracy.**

4 The Court finds that plaintiffs presented substantial evidence of Compass's business plan,
5 pursuant to which the jury was entitled to conclude that Compass and Blatt engaged in a civil
6 conspiracy to further their economic interests in connection with the USACM Loans to the financial
7 detriment of the Direct Lenders. Specifically, plaintiffs presented substantial evidence of the
8 remarkable financial motivations that drove Compass to conspire to place its interests in the
9 proceeds from the USACM Loans in priority to those of the Direct Lenders – *i.e.*, Compass's burden
10 to repay significant interest to Silar, and Blatt's profit participation compensation method. (Trial Tr.
11 at 2701:21-2710:22, 2729:21-2730:19, 2734:14-2741:1, 2745:17-2748:21, 2761:15-2763:20,
12 2765:5-2774:24, 2933:12-2936:24; Trial Exs. 63, 326, 327, 328, 329, 330) Under Nevada law, a
13 conspiracy claim is cognizable when, as here, corporate employees or agents act as individuals for
14 their individual advantage, not merely in their official capacities on behalf of the corporation. *See*
15 *Collins v. Union Fed. Sav. & Loan Ass'n*, 622 P.2d 610, 622 (Nev. 1983); *see also Pocahontas First*
16 *Corp.*, 572 F. Supp. at 508; *Jory*, 542 P.2d at 1403; *Marino*, 2003 WL 503257, at *7. Accordingly,
17 the Court denies Compass's and Blatt's Rule 50(b) motion with respect to plaintiffs' civil conspiracy
18 claim.

19 **F. Substantial Evidence Supports Compass's And Blatt's Liability For Punitive Damages.**

20 **1. Plaintiffs proved their entitlement to an award of punitive damages.**

21 Under Nevada law, punitive damages may be awarded upon clear and convincing evidence
22 of fraud, oppression, or malice, express or implied. *See* NEV. REV. STAT. § 42.005(1). For punitive
23 damages purposes, Nevada law defines: (i) "oppression" to mean despicable conduct that subjects a
24 person to cruel and unjust hardship with conscious disregard of the rights of the person; (ii) "fraud"
25 to be an intentional misrepresentation or concealment of a material fact with the intent to deprive
26 another person of his or her rights or property; (iii) "malice, express or implied" to be despicable
27 conduct which is engaged in with a conscious disregard of the rights or safety of others; and (iv)
28 "conscious disregard" to mean knowledge of the probable harmful consequences of a wrongful act

1 and a willful and deliberate failure to act to avoid those consequences. *See* NEV. REV. STAT.
2 § 42.001. Nevada law permits vicarious liability for punitive damages when a principal adopts or
3 ratifies its agent's wrongful act for which punitive damages are awarded, or is personally guilty of
4 fraud, oppression, or malice, express or implied. *See* NEV. REV. STAT. § 42.007(1); *Smith's Food &*
5 *Drug Ctrs., Inc. v. Bellegarde*, 958 P.2d 1208, 1214 (Nev. 1998), *overruled in part by Countrywide*
6 *Home Loans, Inc. v. Thitchener*, 192 P.3d 243, 252-58 (Nev. 2008).

7 The Court finds that the jury was entitled to conclude that, by clear and convincing evidence,
8 Compass and Blatt were liable for punitive damages. Specifically, plaintiffs presented substantial
9 evidence of Compass's and Blatt's intentional misrepresentations and concealment of material
10 information to deprive plaintiffs of their property, as well as their despicable conduct with conscious
11 disregard of plaintiffs' property rights. *See* NEV. REV. STAT. §§ 42.001, 42.005(1). Among other
12 clear and convincing evidence, plaintiffs proved that:

- 13 • with respect to the Standard Property Loan, Compass wrongly retained over
14 \$870,000 in Loan proceeds pursuant to a secret side deal with the borrower
15 that they did not disclose to plaintiffs (Trial Tr. at 1256:11-1267:25, 1283:7-
16 1286:8, 1312:21-1315:6, 1649:2-1653:2; Trial Exs. 73, 76, 77, 103);
- 17 • with respect to the Shamrock Loan, Compass (i) facilitated a "friendly" third
18 party's purchase of substantially discounted fractional beneficial loan interests
19 even though Compass knew that the collateral securing the Loan was worth
20 millions of dollars more than the Loan's unpaid principal balance, (ii) initiated
21 foreclosure proceedings on the other Tracy Suttles loans – Anchor B, Gess,
22 and Gramercy – in an effort to acquire title to the valuable Shamrock property,
23 and (iii) failed to account for and improperly retained millions of dollars in
24 proceeds from the sale of the Shamrock property (Trial Tr. at 340:10-342:10,
25 348:22-357:20, 367:10-370:16, 405:22-414:15, 1315:16-1317:7, 2779:18-
26 2791:25; Trial Exs. 81, 97, 103, 148, 171, 302A, 314, 2759); and
- 27 • with respect to Bay Pompano Loan, Compass failed, in early April 2007, to
28 disclose to the Direct Lenders and accept the borrower's proposal to repay the

1 unpaid principal balance and all accrued regular interest because that offer
2 waived the repayment of substantial default interest and late fees, causing
3 plaintiffs to be damaged in the amount of their fractional share of the
4 servicing fee and servicer advances that Compass thereafter purported to
5 accrue (Trial Tr. at 728:15-751:18; Trial Exs. 85, 94, 149, 168, 286, 287).

6 Further, in addition to the evidence of Compass's business plan pursuant to which the
7 foregoing wrongful acts were undertaken, *see supra* section III.E, plaintiffs also proved that
8 Compass and Blatt specifically intended to deprive the Direct Lenders of their property:

- 9 • Abel Godines and Carol Kesler both testified about an overheard courthouse
10 conversation involving Blatt in which he discussed those very intentions in
11 quite vulgar terms (Trial Tr. at 181:16-183:8, 314:25-315:13); and
- 12 • Ms. Kesler, Daniel Newman, Christina Knoles, and Ms. Cangelosi each
13 testified regarding the repeated statements separately made to them by Len
14 Mezei, the principal of Compass, including that he purchased "a bag of
15 money" and "a stolen wallet," that he was taking only a little money (\$5,000 -
16 \$10,000) from each of the Direct Lenders but it was substantial money to him
17 because of the enormous number of Direct Lenders, and that he did not need
18 to alter his perspective on what he was entitled to from the Loans because he
19 had superior litigation funding and better lawyers and the Direct Lenders were
20 unorganized and individually "weak" (Trial Tr. at 331:10-334:6, 1317:10-
21 1320:20, 1623:6-1624:23, 1924:8-1935:6).

22 Thus, plaintiffs presented substantial evidence of Compass's and Blatt's liability for punitive
23 damages.

24 **2. The jury verdict form was not plainly erroneous.**

25 Compass and Blatt also raise in their Rule 50(b) motion that the jury's punitive damages
26 award is unconstitutionally vague. That issue was not raised by Compass and Blatt in their Rule
27 50(a) motion or at trial. (Doc. #1983) Therefore, the Court reviews that issue for plain error
28 resulting in a miscarriage of justice. *See E.E.O.C.*, 581 F.3d at 961; *see also* FED. R. CIV. P. 51(d).

1 The Court denies Compass's and Blatt's argument that the jury's punitive damages awards
 2 are unconstitutionally vague. Compass and Blatt cite no authority in support of their assertion that
 3 the jury's purportedly unconstitutionally vague punitive damages awards constitute plain error
 4 resulting in a miscarriage of justice. (Doc. #2045 at 15 n.13) Compass's and Blatt's contention is
 5 also inconsistent with their assertion that the constitutionality of the ratio between the jury's
 6 compensatory and punitive damages awards should be assessed by comparing the aggregate amounts
 7 of those awards. (*Id.* at 16-20)

8 Moreover, Compass's and Blatt's misconduct with respect to each of the three Loans for
 9 which the jury awarded compensatory damages against them was independently sufficient to justify
 10 the jury's punitive damages awards, *see supra* section III.F.1, and Nevada law allows punitive
 11 damages to be awarded for each of the tort claims for which Compass and Blatt were found liable by
 12 the jury, *see supra* section III.F.2.a. In addition, the jury was properly entitled to assess lump sum
 13 punitive damages by defendant, rather than by USACM Loan and/or by plaintiff. *See infra* section
 14 IV.D.3.c. Thus, the Court finds that the jury's lump sum punitive damages awards by defendant are
 15 not plainly erroneous resulting in a manifest miscarriage of justice.

16 IV.

17 DAMAGES AWARDS

18 The Court has ordered that plaintiffs recover from Compass and Blatt the amounts listed
 19 below, plus postjudgment interest at the rate of 0.11% along with costs. This action was tried by a
 20 jury with Judge Robert C. Jones presiding, and the jury has rendered a verdict.

21 A. Compensatory Damages

22 1. Bay Pompano

23 The jury found, among other things, Compass and Blatt jointly and severally liable for
 24 damages in connection with the Bay Pompano Loan in the total amount of \$2,103.81. Based on
 25 plaintiffs' fractional beneficial interests in the Bay Pompano Loan, the jury's damages award is
 26 allocated to plaintiffs, as follows:
 27
 28

Plaintiff	Amount
Kevin Kehl (Kevin Kehl, a married man dealing with his sole & separate property)	\$168.57
Kevin Kehl (Andrew) (Kevin Kehl Custodian For Andrew R. Kehl UNVUTMA)	\$11.24
Kevin Kehl (Susan) (Kevin Kehl Custodian For Susan L. Kehl UIAUTMA)	\$11.24
Robert A. & Tina M. Kehl (Robert A. Kehl & Tina M. Kehl, husband & wife, as joint tenants with right of survivorship)	\$449.53
Patrick Anglin (Patrick J. Anglin, an unmarried man)	\$56.19
Charles Anderson (Charles B. Anderson Trustee of the Charles B. Anderson Trust)	\$224.77
Christina M. Kehl (Christina M. Kehl, an unmarried woman)	\$224.77
SUBTOTAL:	\$1,146.31

2. Shamrock

The jury found, among other things, Compass and Blatt jointly and severally liable for damages in connection with the Shamrock Loan in the total amount of \$23,169.67.

3. Standard Property

The jury found, among other things, Compass and Blatt jointly and severally liable for damages in connection with the Standard Property Loan in the total amount of \$27,291.54. Based on plaintiffs' fractional beneficial interests in the Standard Property Loan, the jury's damages award is allocated to plaintiffs, as follows:

Plaintiff	Amount
Death Valley Acquisitions LLC (Mojave Canyon, Inc., A Nevada Corporation, J.B. Partain, President)	\$9,097.18
Charles Anderson (Charles B. Anderson Trustee of the Charles B. Anderson Trust)	\$7,277.74
SUBTOTAL:	\$16,374.92
TOTAL:	\$17,521.23

Other than the foregoing allocated damages awards, none of the other 52 plaintiffs (including the ten plaintiffs who were not named as parties in the Second Amended Complaint) are entitled to any compensatory damages awards based on the jury's verdict. Among those other plaintiffs who

1 are not entitled to any damages is Rodger Stubbs, who shall take nothing against Compass and Blatt
2 because no evidence was offered at trial showing that he was a Direct Lender or was otherwise
3 entitled to obtain either declaratory relief or damages.

4 **B. Prejudgment Interest**

5 **1. Relevant legal standard.**

6 Because this action was commenced based on diversity jurisdiction, Nevada's prejudgment
7 interest rates apply. *See D.E. Shaw Laminar Portfolios, LLC v. Archon Corp.*, No. 2:07-CV-01146-
8 PMP-LRL, 2010 WL 5178005, at *5 (D. Nev. Dec. 22, 2010) ("In diversity actions, the award of
9 prejudgment interest is governed by state law.") (citing *In re Cardelucci*, 285 F.3d 1231, 1235 (9th
10 Cir. 2002)). In Nevada, "[t]hree items must be determined to enable the trial court to make an
11 appropriate award of interest: (1) the rate of interest; (2) the time when it commences to run; and (3)
12 the amount of money to which the rate of interest must be applied." *See id.* (quoting *Kerala Props.,*
13 *Inc. v. Familian*, 137 P.3d 1146, 1149 (Nev. 2006)).

14 Under Nevada law, in the absence of an agreed term in a contract fixing a different rate of
15 interest, the rate of prejudgment interest is the prime rate at the largest bank in Nevada on January 1
16 or July 1 immediately preceding the date of the transaction, plus two percent. *See* NEV. REV. STAT. §
17 99.040(1); *D.E. Shaw Laminar Portfolios*, 2010 WL 5178005, at *5-6. Interest runs from the time
18 the cause of action accrues, with a biannual adjustment based on the prime interest rate, and accrues
19 until the date of judgment. *See Ramada Inns, Inc. v. Sharp*, 711 P.2d 1, 2 (Nev. 1985)
20 ("Prejudgment interest is viewed as compensation for use by defendant of money to which plaintiff
21 is entitled from the time the cause of action accrues until the time of judgment; it is not designed as a
22 penalty.").

23 **2. Plaintiffs are entitled to an award of prejudgment interest.**

24 The Court concludes that plaintiffs are entitled to an award of prejudgment interest with
25 respect to the four Loans for which the jury awarded compensatory damages. The rate of interest is
26 determined by Nevada state law, the time when prejudgment interest commences to run is based on
27 the dates that the three USACM Loans at issue were resolved – Bay Pompano: August 28, 2008;
28 Shamrock: March 12, 2008; and Standard Property: March 20, 2007 – and is not in dispute, and the

amount of money to which the rate of interest applies was determined by the jury. Accordingly, plaintiffs are entitled to the following amounts of prejudgment interest:

a. Bay Pompano

Plaintiff	Amount
Kevin Kehl (Kevin Kehl, a married man dealing with his sole & separate property)	\$24.47 through 6/30/2011, and \$0.015 daily from 7/1/2011-entry of judgment
Kevin Kehl (Andrew) (Kevin Kehl Custodian For Andrew R. Kehl UNVUTMA)	\$1.63 through 6/30/2011, and \$0.001 daily from 7/1/2011-entry of judgment
Kevin Kehl (Susan) (Kevin Kehl Custodian For Susan L. Kehl UIAUTMA)	\$1.63 through 6/30/2011, and \$0.001 daily from 7/1/2011-entry of judgment
Robert A. & Tina M. Kehl (Robert A. Kehl & Tina M. Kehl, husband & wife, as joint tenants with right of survivorship)	\$65.24 through 6/30/2011, and \$0.040 daily from 7/1/2011-entry of judgment
Patrick Anglin (Patrick J. Anglin, an unmarried man)	\$8.16 through 6/30/2011, and \$0.005 daily from 7/1/2011-entry of judgment
Charles Anderson (Charles B. Anderson Trustee of the Charles B. Anderson Trust)	\$32.62 through 6/30/2011, and \$0.020 daily from 7/1/2011-entry of judgment
Christina M. Kehl (Christina M. Kehl, an unmarried woman)	\$32.62 through 6/30/2011, and \$0.020 daily from 7/1/2011-entry of judgment
SUBTOTAL:	\$166.37 through 6/30/2011, and \$0.102 daily from 7/1/2011-entry of judgment

b. Shamrock

None.

c. Standard Property

Plaintiff	Amount
Death Valley Acquisitions LLC (Mojave Canyon, Inc., A Nevada Corporation, J.B. Partain, President)	\$2,574.32 through 6/30/2011, and \$0.810 daily from 7/1/2011-entry of judgment
Charles Anderson (Charles B. Anderson Trustee of the Charles B. Anderson Trust)	\$2,059.45 through 6/30/2011, and \$0.648 daily from 7/1/2011-entry of judgment
SUBTOTAL:	\$4,633.76 through 6/30/2011, and \$1.458 daily from 7/1/2011-entry of judgment
TOTAL:	\$4,800.13 through 6/30/2011, and \$1.560 daily from 7/1/2011-entry of judgment

C. Attorneys' Fees, Costs, And Expenses

For the following reasons, the Court awards attorneys' fees, costs, and expenses to plaintiffs in the total amount of \$2,476,636.08 (\$2,464,052.94 in attorneys' fees, costs, and expenses + \$12,583.14 in federal trial procedure costs). As further discussed *infra*, other than plaintiffs' recovery of federal trial procedure costs in the total amount of \$12,583.14, the Court's award of attorneys' fees, costs, and expenses is made in gross to plaintiffs as additional compensatory damages.

1. Relevant legal standard.

Because this action was commenced based on diversity jurisdiction, the Court applies Nevada law to determine whether an award of attorneys' fees is allowed. *See GCM Air Group, LLC v. Chevron U.S.A, Inc.*, No. 3:07-cv-00168-BES-RAM, 2009 WL 1810743, at *1 (D. Nev. June 24, 2009) (citing *Canada Life Assur. Co. v. LaPeter*, 563 F.3d 837, 847 (9th Cir. 2009)). Nevada law permits attorneys' fees to be awarded if authorized by statute, rule, or contract. *See id.* (citing *Frank Settelmeier & Sons, Inc. v. Smith & Harmer, Ltd.*, 197 P.3d 1051, 1059 (Nev. 2008)). Under Nevada law, "[a] plaintiff may be considered the prevailing party for attorney's fee purposes if it succeeds on any significant issue in litigation which achieves some of the benefit [it] sought in

1 bringing the suit.” *See Chowdhry v. NLVH, Inc.*, 851 P.2d 459, 464 (Nev. 1993) (internal quotations
2 and citations omitted).

3 Once a party establishes its entitlement to an attorneys’ fees award, the Court must determine
4 the reasonableness of such an award. *See GCM Air Group, LLC*, 2009 WL 1810743, at *4. In the
5 Ninth Circuit, attorneys’ fees are calculated using the “lodestar” method, which requires the
6 multiplication of the number of hours reasonably expended by a reasonable hourly rate. *See id.* The
7 factors set forth in Local Rule 54-16 guide the analysis of the lodestar amount. *See id.* Those
8 factors include: (i) the results obtained and the amounts involved; (ii) the time and labor required;
9 (iii) the novelty and difficulty of the questions involved; (iv) the skill required to perform the legal
10 services properly; (v) the customary fee; (vi) whether the fee is fixed or contingent; (vii) the
11 experience, reputation, and ability of the attorneys; and (viii) the undesirability of the case, if any.
12 *See* LR 54-16(b)(3). A reasonable hourly rate is determined by considering the skill, experience, and
13 reputation of the attorneys requesting fees, and should reflect prevailing market rates in the
14 community in which the Court sits. *See GCM Air Group, LLC*, 2009 WL 1810743, at *4 & n.3.

15 Moreover, a prevailing party is entitled to recover its reasonable federal trial procedure costs.
16 *See* FED. R. CIV. P. 54(d)(1) (“Unless a federal statute, these rules, or a court order provides
17 otherwise, costs – other than attorney’s fees – should be allowed to the prevailing party.”); LR 54-1–
18 LR 54-15. Nevada law also entitles a prevailing party, as a matter of right, to recover its costs in an
19 action in which damages in excess of \$2,500 are sought. *See* NEV. REV. STAT. § 18.020(3) (“Costs
20 must be allowed of course to the prevailing party against any adverse party against whom judgment
21 is rendered . . . in an action for the recovery of money or damages, where the plaintiff seeks to
22 recover more than \$2,500.”); *Coker Equip. Co. v. Wittig*, 366 Fed. Appx. 729, 733 (9th Cir. 2010)
23 (discussing same). Those recoverable costs include, among other things, reasonable costs for
24 telecopies, photocopies, long distance telephone calls, postage, “travel and lodging incurred taking
25 depositions and conducting discovery,” and “[a]ny other reasonable and necessary expense incurred
26 in connection with the action, including reasonable and necessary expenses for computerized
27 services for legal research.” *See* NEV. REV. STAT. § 18.005 (defining the term “costs” for purposes
28 of NEV. REV. STAT. § 18.020). Further, the Local Rules for the District of Nevada permit an award

1 of attorneys' fees to include costs and expenses that are not otherwise taxable pursuant to Rule
2 54(d). *See* LR 54-16(b)(2) ("Unless otherwise ordered by the court, a motion for attorney's fees
3 must, in addition to those matters required by Fed. R. Civ. P. 54(d)(2)(B), include . . . [a]n
4 itemization of all costs sought to be charged as part of the fee award and not otherwise taxable
5 pursuant to LR 54-1 through 54-15 . . .").

6 **2. Plaintiffs are entitled to an award of attorneys' fees pursuant to the LSAs.**

7 The predominant LSAs expressly authorize an award of attorneys' fees, costs, and expenses
8 to the prevailing party in an action to enforce any provisions therein:

9 Attorney's Fees. In the event any party hereto brings an action to
10 enforce any of the provisions of this Agreement, the party against
11 whom judgment is rendered in such action shall be liable to the other
12 for reimbursement of its costs, expenses and attorneys' fees, including
13 such costs, expenses and fees as may be incurred on appeal, [sic]

14 (892 Doc. #2056, Ex. A, § 15) The Court finds that of the 52 named plaintiffs, 47 have an LSA
15 containing the foregoing attorneys' fees provision, and that all 23 plaintiffs awarded damages by the
16 jury have such an LSA. (*Id.*, Exs. A-B) All plaintiffs' LSAs also provide that they are governed by
17 Nevada law, and are "binding upon and shall inure to the benefit of the parties' respective successors
18 and assigns." (*Id.*)

19 The Court finds that the LSAs include the following three provisions that were successfully
20 enforced by plaintiffs in this action: (i) the "Compensation [owed] to USA[CM] for Loan
21 Servicing," which purported to entitle Compass as the loan servicer to servicing fees, default
22 interest, and/or late charges as compensation;⁴ (ii) the "Rights of [Direct] Lender if USA[CM] Fails
23 to Act," or the "51% Rule," which entitled 51% or more of the Direct Lenders in a defaulted Loan to
24 act on behalf of the remaining Direct Lenders in the Loan, including designating a new servicing
25 agent; and (iii) the "Limited Power of Attorney," which obligated Compass as the loan servicer "to
26 protect Lender's interest under any note, deed of trust, guaranty, security agreement or other

27 ⁴ The LSAs with attorneys' fees provisions purported to entitle Compass as the loan servicer to
28 servicing fees, default interest, and late charges, whereas the other LSAs purported to entitle
Compass as the loan servicer to servicing fees and late charges, but not default interest. (Doc.
#2056, Exs. A-B)

1 document pertaining to any Loan.” (*Id.*) Thus, pursuant to the LSAs, Nevada law authorizes the
2 Court to award attorneys’ fees, costs, and expenses in the total amount of \$2,464,052.94 to those 47
3 plaintiffs and jointly and severally against Compass. *See GCM Air Group, LLC*, 2009 WL 1810743,
4 at *1; *Chowdhry*, 851 P.2d at 464.

5 Accordingly, the Court’s award of attorneys’ fees, costs, and expenses is made in gross and
6 without allocation to all plaintiffs, and Compass is liable for payment of that award.

7 **3. Plaintiffs’ requested attorneys’ fees were reasonable and necessary.**

8 The Court finds that plaintiffs’ requested attorneys’ fees were reasonable and necessary
9 because: (i) the hourly rates for plaintiffs’ counsel are reasonable; (ii) the hours expended by
10 plaintiffs’ counsel were reasonable and necessary under the circumstances; and (iii) the requested
11 attorneys’ fees are warranted based on the efficacy and able presentation of plaintiffs’ counsel, the
12 complexity of the case, the substantial risk of non-collection of contingency fees, and the Court’s
13 disinclination toward plaintiffs’ position when plaintiffs’ counsel made their appearances in the case.

14 **a. The hourly rates for plaintiffs’ counsel are reasonable.**

15 The Court previously determined in connection with the sanctions award imposed in the
16 Asset Resolution Bankruptcy Cases that the hourly rates for Janet Chubb and her firm’s attorneys of
17 between \$170 and \$420, the hourly rate of Lisa Rasmussen of \$300, and Mr. Duncan’s estimated
18 hourly rate of \$400 were reasonable. The Court also determined that Bickel & Brewer’s applicable
19 hourly rates of between \$275 and \$775 were high when compared to prevailing market rates in
20 Nevada, the hourly rates for Ms. Chubb and attorneys at her firm, and Mr. Duncan’s estimated
21 hourly rate.

22 Based on that determination, Bickel & Brewer substantially and appropriately lowered its
23 proposed hourly rates for purposes of plaintiffs’ request for an award of attorneys’ fees in this action
24 to between \$350 (as a blended rate of various Bickel & Brewer professionals whose usual hourly
25 rates are between \$240 and \$700) and \$600. The Court finds that those suggested hourly rates are
26 reasonable in comparison to prevailing market rates for complex commercial litigation in Nevada of
27 between \$350 and \$775 an hour, the hourly rates for Ms. Chubb and attorneys at her firm, the hourly
28 rate for Ms. Rasmussen, and Mr. Duncan’s estimated hourly rate.

1 **b. The results obtained and the amount involved were significant.**

2 Plaintiffs prevailed on the three issues on which this action was based: (i) the amount of
3 compensation owed to the loan servicers under the LSAs, including whether such compensation was
4 to be paid in priority to the repayment of the Direct Lenders' unpaid principal balance and due and
5 owing accrued regular interest in connection with the Loans; (ii) the termination of the loan servicers
6 under the LSAs without cause; and (iii) the damages resulting from Compass's breaches of various
7 duties arising from the LSAs. Specifically, Compass and Asset Resolution erroneously claimed to
8 be entitled to tens of millions of dollars in loan servicing compensation in priority to the Direct
9 Lenders. Indeed, based on the Court's rulings, Asset Resolution was paid the total amount of only
10 \$94,000 as its loan servicing compensation in connection with the sale of the property securing the
11 Gess Loan, even though it claimed to be entitled under the LSAs to loan servicing compensation
12 totaling more than \$11 million (which was well in excess of the net sale proceeds of \$6.5 million).
13 The Court also determined that: (i) Compass and Blatt could not place their financial interests above
14 those of the Direct Lenders, for whom they were servicing the USACM Loans; and (ii) the purported
15 cause requirement set forth in the LSAs in connection with the 51% Rule was unenforceable under
16 Nevada law. Finally, a jury awarded plaintiffs a total of \$52,565.02 in compensatory damages,
17 excluding attorneys' fees and prejudgment interest from Compass and Blatt, a total of \$750,000 in
18 punitive damages from Compass, and a total of \$50,000 in punitive damages from Blatt.

19 **c. The substantial time and labor required.**

20 Plaintiffs' counsel were required to expend substantial time and labor to prosecute this
21 action, given the breadth of novel and difficult issues, the number of parties, and the quantity of
22 outstanding Loans (not to mention the chapter 11 bankruptcy filings in the United States District
23 Court for the Southern District of New York on October 14, 2009). Plaintiffs' counsel expended a
24 total of 5,686.60 hours, as follows: (i) 838 total hours in connection with the loan servicing
25 compensation issue, including in connection with the sale of the property securing the Gess Loan;
26 (ii) 356.6 total hours in connection with the termination issue, including the designation of Compass
27 as a mortgage broker and fiduciary under Nevada law; (iii) 4,246.40 total hours in connection with
28 the parties' preparation for and pursuit of trial, including discovery, motion practice, mediation, and

1 jury trial; and (iv) 245.6 total hours in connection with Silar's and Asset Resolution's consolidated
2 interlocutory appeals. Indeed, the Court held numerous hearings in connection with the substantial
3 motion practice involved in this case. The Court also presided over a jury trial that spanned a total
4 of five weeks and involved the claims of 37 plaintiffs, against seven defendants, with respect to ten
5 separate USACM Loans.

6 The Court also notes that plaintiffs' requested attorneys' fees are eminently reasonable when
7 compared to those incurred by Greenberg Traurig on behalf of Silar and Asset Resolution between
8 only May 18, 2009 (the date that Greenberg Traurig made its appearance for those defendants in this
9 case), and October 14, 2009 (Asset Resolution's chapter 11 petition date). Whereas plaintiffs are
10 seeking an award of attorneys' fees and costs in the total amount of \$2,464,052.94 (\$2,306,332.50 +
11 \$157,720.44) for services rendered from January 2009, through December 31, 2010, Silar and Asset
12 Resolution paid at least \$802,952.18 in attorneys' fees and costs to Greenberg Traurig prior to
13 October 14, 2009 (Doc. #8 in Case No. 09-32824 at 12, 28) (reflecting payments of \$302,952.18 on
14 July 31, 2009, \$125,897.57 on October 1, 2009, and \$374,102.43 on October 1, 2009), and were
15 liable for an additional \$1.45 million in attorneys' fees to Greenberg Traurig as of October 14, 2009
16 (Doc. #7 in Case No. 09-32824 at 8), for a total amount of \$2,252,952.18. That amount is only
17 approximately \$211,000 less than plaintiffs' requested fees and costs, even though Greenberg
18 Traurig's attorneys' fees and costs were incurred over only six months and plaintiffs' requested fees
19 and costs were incurred over 24 months. In addition, the amount of Greenberg Traurig's attorneys'
20 fees and costs does not include the additional attorneys' fees and costs incurred on behalf of Silar
21 and Asset Resolution in this case by Sonnenschein, Nath & Rosenthal and its local counsel from
22 January 2009, through May 18, 2009, or by the Majorie Firm, Ltd. and its local counsel from
23 October 14, 2009, through December 31, 2010.

24 d. **The questions involved were novel and complex, requiring plaintiffs'**
25 **counsel to have wide-ranging skills.**

26 This case involved the resolution of novel questions of Nevada law regarding the rights and
27 duties of mortgage brokers and loan servicers, including: (i) the determination that mortgage
28 brokers and loan servicers have a fiduciary duty when handling funds and taking title to real property

1 received on account of fractional beneficial interest holders, as well as a duty not to engage in
2 grievous and perfidious misconduct pursuant to the implied covenant of good faith and fair dealing
3 in tort; (ii) the interpretation and application of the 51% Rule set forth in Nevada Administrative
4 Code § 645B.073 and Nevada Revised Statutes § 645B.340(1); and (iii) the application of Chapter
5 645B of the Nevada Revised Statutes governing mortgage brokers to loan servicers such as
6 Compass. The Court also interpreted Silar's and Compass's complex repurchase agreement and
7 related instruments and concluded that Silar was the title owner of the LSAs and Compass was
8 Silar's servicing agent. Thus, plaintiffs' counsel required extensive complex commercial litigation
9 and real estate skills to successfully address all those novel and complex questions.

10 **e. Bickel & Brewer represented plaintiffs on a full contingency fee basis.**

11 The customary hourly billing rates for the Bickel & Brewer attorneys that primarily worked
12 on this case are between \$500 and \$775, and Mr. Duncan's estimated hourly rate is \$400. Yet,
13 Bickel & Brewer and Mr. Duncan agreed to work, and have worked since March 2009, on behalf of
14 plaintiffs (and 1,500 other Direct Lenders) on a full contingency fee basis. Bickel & Brewer and Mr.
15 Duncan also agreed to cover all expenses incurred during the course of this litigation. As a result,
16 plaintiffs were not obligated to pay Bickel & Brewer or Mr. Duncan unless they prevailed in this
17 litigation, and then only from collected funds.

18 **f. The experience, reputation, and ability of plaintiffs' counsel substantially**
19 **contributed to plaintiffs' success in this case.**

20 The Court has commented on more than one occasion that both plaintiffs and defendants
21 were ably represented in this case by their respective counsel. The Court is also well aware of Ms.
22 Chubb's experience, reputation, and ability, given her extensive years of practice before it. In
23 addition, although this case had been pending for almost two years prior to Bickel & Brewer's, Mr.
24 Duncan's, and Ms. Rasmussen's involvement, during which time plaintiffs were represented by two
25 other law firms (the Law Offices of Alan R. Smith and Fulbright & Jaworski, LLP), it was not until
26 after they appeared in this action as counsel for plaintiffs that plaintiffs obtained any of the relief on
27 which the Court's award of attorneys' fees is based. Indeed, the Court has previously remarked that
28 Bickel & Brewer and Mr. Duncan appeared in this case, on a full contingency fee basis, at a time

1 when the vast majority of the Court's rulings were protective of defendants' interests, not plaintiffs'
2 interests.

3 g. **This case was undesirable under the circumstances, including plaintiffs'**
4 **inability to pay for legal services.**

5 The Court finds that, but for Bickel & Brewer's and Mr. Duncan's agreement to represent
6 plaintiffs solely on a contingency fee basis, plaintiffs would have been unable to retain them as their
7 counsel. Indeed, the Court's Receiver, Tom Grimmett, recommended in his report to the Direct
8 Lenders in the Summer of 2008 that they should accept Silar's proposed class action settlement – in
9 which the Direct Lenders would agree to pay Silar tens of millions of dollars – because they would
10 be unlikely to find counsel and prevail against defendants:

11 The foreclosure by Silar of virtually all of Compass' assets makes
12 much of the tort analysis an academic exercise. Regardless of the
13 strength of these claims, the DLs will be extremely hard pressed to
14 find any law firm to pursue those claims on a contingency fee when
15 they are virtually guaranteed no recovery given Compass' insolvent
16 status. It would be impossible as a practical matter to hire any law
17 firm to pursue claims on any other financial basis.

18 ***

19 As our analysis has shown, DLs would likely win some battles and
20 lose some battles with Compass. The waterfall flows both ways,
21 depending on the language of the LSAs and Notes. . . . It appears that
22 the DLs may be able to succeed on the following [damages] claims
23 against Compass Nevertheless, it is important to understand that
24 litigation entails tremendous time, money, and emotional stress. Over
25 this entire process, the DLs can see that few rulings in the Court have
26 "gone their way" thus far, creating uncertainty as to any outcome. The
27 case is factually complex, which will result in an enormously costly
28 process. The opposition has proved ready, willing, and able to fight to
the end on the seemingly smallest of details and shows no sign of
changing that disposition should this matter proceed to litigation. . . .
Law firms have thus far expended approximately \$5 Million defending
the DLs and not all parties have even answered the complaints yet.
The DLs can expect that number to double or triple if this matter were
to go to trial or to appeal. (If the DLs are able to find a firm willing to
take the case). Litigation would likely consume years and years of
time.

29 (Doc. #765, Ex. A at 1, 46-50) (emphasis in original) Instead, the jury awarded substantial
30 compensatory and punitive damages to only 20 plaintiffs.

1 4. **Defendants improperly conflate the attorneys' fees award to which plaintiffs are**
2 **entitled as compensatory damages with the attorneys' fees that plaintiffs owe to**
3 **their counsel.**

4 Defendants contend that the Court may not award attorneys' fees to plaintiffs because the
5 Court cannot determine what fees were incurred, and must be reimbursed, by which plaintiffs
6 pursuant to their contingency fee agreement with Bickel & Brewer and Mr. Duncan. Defendants,
7 however, are improperly conflating the attorneys' fees to be awarded to plaintiffs as compensatory
8 damages with those fees that plaintiffs are obligated to pay to their counsel under the terms of their
9 contingency fee agreement.

10 Initially, under Ninth Circuit precedent and Nevada law, the Court is permitted to, and does,
11 calculate plaintiffs' award of attorneys' fees based on the lodestar approach, even though they have a
12 contingency fee agreement with some of their counsel (Bickel & Brewer and Mr. Duncan, but not
13 Ms. Chubb or Ms. Rasmussen). *See Vacation Village, Inc. v. Clark County, Nev.*, 24 Fed. Appx.
14 785, 788 (9th Cir. 2007) (affirming calculation of attorneys' fees award under the lodestar approach,
15 rather than pursuant to the terms of a contingency fee agreement, when federal statute authorized a
16 prevailing plaintiff to recover an award of attorneys' fees); *Shuette v. Beazer Homes Holdings Corp.*,
17 124 P.3d 530, 549 (Nev. 2005) (under Nevada law, a court may award attorneys' fees using either a
18 lodestar approach or a contingency fee).

19 Moreover, the Court cannot use plaintiffs' contingency fee agreement to increase or decrease
20 what it concludes is a reasonable attorneys' fee under the lodestar approach. *See Van Gerwen v.*
21 *Guarantee Mut. Life Co.*, 214 F.3d 1041, 1048 (9th Cir. 2000) ("A district court may not rely on a
22 contingency agreement to increase or decrease what it determines to be a reasonable attorney's
23 fee."); *Quesada v. Thomason*, 850 F.2d 537, 543 (9th Cir. 1988) ("We therefore reject the claim that
24 a contingent-fee agreement can justify lowering an otherwise reasonable lodestar fee."). In other
25 words, because the Court finds that its award of attorneys' fees to plaintiffs as a measure of
26 compensatory damages is reasonable under the lodestar approach, the Court need not and will not
27 undertake the arduous task of calculating the actual contingency fee that plaintiffs may ultimately
28 owe to Bickel & Brewer and Mr. Duncan. *See Hasbrouck v. Texaco, Inc.*, 879 F.2d 632, 639 (9th

1 Cir. 1989) (“The presence of a fee agreement is simply one of many factors to be considered in the
2 determination of a reasonable fee, and ‘[s]hould a fee agreement provide less than a reasonable fee
3 ..., the defendant should nevertheless be required to pay the higher amount.’”) (quoting *Blanchard v.*
4 *Bergeron*, 489 U.S. 87 (1989)). Thus, the Court rejects defendants’ contention that its attorneys’
5 fees award to plaintiffs must be based on the contingency fee agreement with their counsel.

6 **5. Plaintiffs are also entitled to an award of costs and expenses, which were**
7 **reasonable and necessary.**

8 The Court finds that plaintiffs, as prevailing parties, are also entitled to recover their
9 reasonable and necessary costs and expenses in the total amount of \$170,303.58. In this diversity
10 action, plaintiffs’ recovery of federal trial procedure costs in the total amount of \$12,583.14 is
11 governed by federal law, and their recovery of an additional \$157,720.44 in travel-related expenses,
12 hearing transcript charges, legal research expenses, and office expenses is governed by Nevada law
13 and the LSAs. See *Krave Entm’t, LLC*, 667 F. Supp. 2d at 1237 (“A federal court exercising
14 diversity jurisdiction applies state substantive law and federal procedural law.”); *Clausen v. M/V*
15 *New Carissa*, 339 F.3d 1049, 1064-66 (9th Cir. 2003) (affirming award of expert witness fees to
16 prevailing plaintiffs because Oregon’s Oil Spill Act provided that a prevailing plaintiff was entitled
17 to an award of attorneys’ fees and costs as a measure of damages, which is a matter of state
18 substantive law, not a federal cost provision); LR 54-16(b)(2). The Court finds that plaintiffs’
19 requested costs and expenses were reasonable and necessary and are to be allowed under federal and
20 Nevada law and pursuant to the LSAs. See FED. R. CIV. P. 54(d)(1); LR 54-1–LR 54-15; NEV. REV.
21 STAT. §§ 18.020(3), 18.005; *Coker Equip. Co.*, 366 F. App’x at 733. Thus, plaintiffs are entitled to
22 recover from Compass and Blatt their costs and expenses in the total amount of \$170,303.58
23 (\$12,583.14 + \$157,720.44), of which \$157,720.44 is awarded to plaintiffs as compensatory
24 damages under Nevada law and pursuant to the LSAs.

25 **D. Punitive Damages**

26 The Court finds that the jury’s punitive damages awards are constitutional, and denies
27 Compass’s and Blatt’s requests for a new trial or remittitur, because: (i) their conduct was
28 despicable and reprehensible; (ii) the ratio of the jury’s compensatory damages awards plus the

1 Court's post-trial awards of prejudgment interest and attorneys' fees, costs, and expenses, on the one
2 hand, to the jury's punitive damages awards, on the other, comports with due process; and (iii) the
3 jury's punitive damages awards are consistent with the civil penalties permitted by Nevada law for
4 their misconduct.

5 **1. Relevant legal standards.**

6 The Court may grant a new trial under Federal Rule of Civil Procedure 59(a) only if the
7 jury's verdict is against the clear weight of the evidence, the jury's verdict is based on false or
8 perjurious evidence, the damages are excessive, or to prevent a miscarriage of justice. *See Molski v.*
9 *M.J. Cable, Inc.*, 481 F.3d 724, 729 (9th Cir. 2007). Compass and Blatt move for a new trial based
10 solely on the ground that the jury's punitive damages awards are excessive.

11 The United States Supreme Court has held that punitive damages can be imposed to further
12 "legitimate interests in punishing unlawful conduct and deterring its repetition." *See BMW of N. Am.*
13 *v. Gore*, 517 U.S. 559, 568 (1996). The Due Process Clause, however, "prohibits the imposition of
14 grossly excessive and arbitrary punishments." *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538
15 U.S. 408, 416 (2003). The Supreme Court has instructed that three "guideposts" are to be used to
16 determine whether a punitive damages award is unconstitutionally excessive: "(1) the degree of
17 reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm
18 suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive
19 damages awarded by the jury and the civil penalties authorized or imposed in comparable cases."
20 *See id.* at 416-17.

21 **2. Compass's and Blatt's tortious actions were reprehensible.**

22 In *State Farm*, the Supreme Court stated that the "most important indicium of the
23 reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's
24 conduct," which is evaluated by considering whether:

25 [i] the harm caused was physical as opposed to economic; [ii] the
26 tortious conduct evinced an indifference to or a reckless disregard of
27 the health or safety of others; [iii] the target of the conduct had
28 financial vulnerability; [iv] the conduct involved repeated actions or
was an isolated incident; and [v] the harm was the result of intentional
malice, trickery, or deceit, or mere accident.

1 *See id.* at 419. The Supreme Court subsequently recognized that “misconduct engaged in to obtain
2 financial gain or augment profit was highly culpable deserving greater punishment.” *See Merrick v.*
3 *Paul Revere Life Ins. Co.*, 594 F. Supp. 2d 1168, 1185 (D. Nev. 2008) (citing *Exxon Shipping Co. v.*
4 *Baker*, 128 S.Ct. 2605, 2622 (2008)). Based on those considerations, the Court finds that Compass’s
5 and Blatt’s tortious actions were reprehensible. Compass and Blatt have an extreme level of
6 culpability given their cavalier attitude to the injuries that they maliciously inflicted on the Direct
7 Lenders and, therefore, punitive damages are to be awarded to plaintiffs at a very high level. Their
8 misconduct shocked the conscience of the Court.

9 First, Compass and Blatt engaged in their tortious conduct to further their financial gain to
10 the detriment of the Direct Lenders. *See supra* section III.C.2, D, E, F.1. Indeed, the jury heard
11 considerable evidence of Compass’s and Blatt’s business strategy to pursue the collection of their
12 “bag of money” and “stolen wallet.” *See id.* Compass’s and Blatt’s business strategy was to take
13 small amounts of money (\$5,000 - \$10,000) from each of the Direct Lenders, which amounted to
14 substantial sums for defendants. *See id.*

15 Second, Compass’s and Blatt’s tortious conduct was not an isolated incident, and involved
16 intentional malice, trickery, or deceit, as opposed to mere accident. Compass and Blatt repeated
17 their tortious actions throughout Compass’s tenure as the loan servicer under the LSAs, beginning
18 with the Standard Property Loan in early March 2007, and continuing thereafter with the Shamrock,
19 Bay Pompano, Eagle Meadows, Fox Hills, Gess, and Gramercy Loans. *See id.* In undertaking those
20 tortious actions, Compass and Blatt intentionally deceived the Direct Lenders to maximize their
21 financial gain to the detriment of the Direct Lenders. *See id.*

22 Third, Compass’s and Blatt’s misconduct was targeted at the Direct Lenders, who were
23 financially vulnerable, as the unrebutted trial testimony established:

24 Mr. Bickel, that was really the first time I had truly seen the face of the
25 direct lenders. . . . [P]eople were coming in on walkers, with oxygen,
26 they were – they were old and they were scared. . . . I was stunned
27 actually at the . . . demographics of the USA Capital investor. . . . I
28 mean, many of them had assistance coming into the theater, and that
was the first time I ever saw the face of these people. . . . Q I’m asking
about those people you visited with at the University of Nevada Reno
theater [in June 2006], and did you develop an impression from
speaking with people as to what their station in life was? A Yes, I did

1 develop an impression. Clearly, they were at the stage in life that they
2 were very retired, not just retired, newly retired, but many of them had
3 been retired for some period of time. Some of them had failing health,
4 some of them were vital, but, for the most part, this was their
5 retirement income. This was their life savings.

6 (Trial Tr. at 1806:6-1808:19) Plaintiffs also presented un rebutted testimony of Compass's and
7 Blatt's intentions to take advantage of both the disparate and unorganized Direct Lenders, especially
8 since many were elderly, as well as their superior resources to pursue their business strategy to gain
9 financially at the expense of the Direct Lenders. *See supra* section III.E, F.1. The Court can and
10 does take into consideration the financial vulnerability of Direct Lenders other than plaintiffs when
11 assessing the reprehensibility of defendants' actions. *See Action Marine, Inc. v. Continental Carbon*
12 *Inc.*, 481 F.3d 1302, 1320 (11th Cir. 2007) ("While punitive damages may not be awarded to punish
13 for harm inflicted on nonparties, we may consider the risk of harm to others as part of the
14 reprehensibility analysis.") (citing *Philip Morris U.S.A. v. Williams*, 127 S.Ct. 1057, 1063-64
15 (2007)); *Merrick*, 594 F. Supp. 2d at 1187 ("*In re Exxon [Valdez*, 490 F.3d 1066 (9th Cir. 2007),]
16 again teaches that when assessing reprehensibility the Court can also consider the risk of harm to
17 others when the conduct at issue was putting them at risk too. There is little doubt that Defendants'
18 conduct directed at others was directed at the financially vulnerable.").

19 Fourth, although the harm caused by Compass's and Blatt's misconduct was largely
20 economic, substantial punitive damages can nevertheless be awarded because they intentionally
21 inflicted economic injury on plaintiffs in furtherance of their own financial gain. *See BMW*, 517
22 U.S. at 576 (holding that "infliction of economic injury, especially when done intentionally through
23 affirmative acts of misconduct, . . . can warrant a substantial [punitive damages] penalty."); *see*
24 *supra* section III.C.2, D, E, F.1. Moreover, defendants' tortious actions not only resulted in
25 economic harm to plaintiffs, but they also deprived plaintiffs of their bargained for consideration,
26 *i.e.*, peace of mind. Because each of the Loans could have hundreds of different Direct Lenders as
27 investors, defendants were the only ones who could preserve, protect, and collect the Direct Lenders'
28 interests in the Loans and the underlying collateral. *See Merrick*, 594 F. Supp. 2d at 1186 ("Nevada

1 law also recognizes that the tort of insurance bad faith goes beyond a mere economic offense
2 because it deprives the insured of the bargained for consideration, peace of mind.”).

3 Finally, Compass’s and Blatt’s tortious conduct evinced a plain indifference to the health,
4 safety, and financial circumstances of the Direct Lenders. Specifically, Ms. Kesler, Ms. Knoles, and
5 Ms. Cangelosi testified regarding Compass’s and Blatt’s unabashed pursuit of their financial
6 interests in the Loans, without regard to the plight or interests of the Direct Lenders – many of whom
7 were elderly, had invested their life savings with USACM, and were already experiencing financial
8 hardships (including the loss of their homes and their inability to buy their medicines) as a result of
9 the loss of their monthly income from the USACM Loans. (Trial Tr. at 331:17-333:20, 1492:12-21,
10 1623:6-1624:23, 1630:10-1631:23, 1934:3-1935:6) Accordingly, the Court finds that Compass’s
11 and Blatt’s misconduct was particularly egregious and reprehensible and, therefore, warrants
12 substantial punitive damages.

13 3. **The ratio of the actual and potential harm suffered by plaintiffs to the jury’s**
14 **punitive damages awards is not unconstitutional.**

15 a. **Applicable legal standard.**

16 Although the Supreme Court has never imposed a bright-line ratio that a punitive damages
17 award cannot exceed, it has indicated that “[s]ingle-digit multipliers are more likely to comport with
18 due process” *See State Farm*, 538 U.S. at 425. At the same time, however, the Supreme Court
19 has rejected a constitutional limit to punitive damages based on a simple mathematical comparison
20 of actual and potential damages to the punitive damages award. *See BMW*, 517 U.S. at 582 (“[W]e
21 have consistently rejected the notion that the constitutional line is marked by a simple mathematical
22 formula, even one that compares actual and *potential* damages to the punitive award.”) (emphasis in
23 original).

24 Moreover, “ratios greater than those [the Supreme Court has] previously upheld may
25 comport with due process where a particularly egregious act has resulted in only a small amount of
26 economic damages.” *See State Farm*, 538 U.S. at 425 (internal quotations and citation omitted). In
27 such circumstances, “low awards of compensatory damages may properly support a higher ratio than
28 high compensatory awards,” and the determination of whether a punitive damages award is grossly

1 excessive may include a consideration of not just the damages that a plaintiff actually suffered, but
2 also the amount of potential damage that could have resulted from the defendant's reprehensible
3 conduct. *See id.*; *see also BMW*, 517 U.S. at 582; *Planned Parenthood of the Columbia/Williamette*
4 *Inc. v. Am. Coalition of Life Activists*, 422 F.3d 949, 962 (9th Cir. 2005) ("[I]n cases where there are
5 insignificant economic damages but the behavior was particularly egregious, the single-digit ratio
6 may not be a good proxy for constitutionality."); *Swinton v. Potomac Corp.*, 270 F.3d 794, 818-19
7 (9th Cir. 2001) (affirming constitutionality of 28:1 ratio when compensatory damages were
8 "necessarily low" because plaintiff's back pay damages were measured by his \$8.50 hourly wage).
9 Indeed, under such circumstances, a higher ratio of punitive damages is warranted to ensure that the
10 traditional purposes of punishment and deterrence are served. *See BMW*, 517 U.S. at 568.

11 **Plaintiffs' actual and potential harm includes the jury's compensatory**
12 **damages awards and the Court's post-trial awards of prejudgment**
13 **interest and attorneys' fees, costs, and expenses.**

14 In calculating the ratio between plaintiffs' actual or potential harm and the jury's punitive
15 damages awards, the Court includes the jury's compensatory damages awards, as well as the Court's
16 post-trial awards of prejudgment interest and attorneys' fees, costs, and expenses.⁵ *See Coker Equip.*
17 *Co.*, 366 Fed. Appx. at 733; *Bongiovi v. Sullivan*, 138 P.3d 433, 451-52 (Nev. 2006); *Action Marine,*
18 *Inc.*, 481 F.3d at 1321 (including "compensatory in nature" attorneys' fees awarded under Georgia
19 statute in tort cases involving bad faith "as part of the measure of actual damages for the necessary
20 comparison" of whether a punitive damages award is unconstitutionally excessive). The Court does
21 so because, pursuant to the LSAs and under Nevada law, those post-trial awards constitute additional
22 compensation to plaintiffs. *See Ramada Inns, Inc.*, 711 P.2d at 2 (prejudgment interest "is viewed as
23 compensation" and "is not designed as a penalty"); *GCM Air Group, LLC*, 2009 WL 1810743, at *1
24 (Nevada law permits attorneys' fees to be awarded if authorized by contract); NEV. REV. STAT.
25 §§ 18.010(4), 18.020(3) (discussing entitlement of "prevailing party" to awards of attorneys' fees
26
27

28 ⁵ The Court, however, does not include its award of federal trial procedure costs to plaintiffs in the
total amount of \$12,583.14 in the calculation of the ratio. *See supra* section IV.C.5.

1 and costs). Indeed, the LSAs provide that the prevailing party is entitled to “reimbursement” of its
2 attorneys’ fees, costs, and expenses. (Doc. #2056, Ex. A, § 15)

3 c. **Based on plaintiffs’ total actual and potential harm, the jury’s punitive**
4 **damages awards are not grossly excessive.**

5 The Court assesses the constitutionality of the jury’s separate punitive damages awards in
6 gross and without allocation to plaintiffs. It does so because: (i) the jury made lump sum joint and
7 several compensatory damages awards by USACM Loan, not by plaintiff; (ii) the jury made lump
8 sum punitive damages awards by defendant, not by USACM Loan or by plaintiff; and (iii)
9 defendants’ misconduct was undertaken in gross against the Direct Lenders, resulting in both the
10 Court awarding attorneys’ fees, costs, and expenses in gross and without allocation to plaintiffs, and
11 Compass and Blatt being jointly and severally liable for those attorneys’ fees, costs, and expenses.
12 *See Merrick*, 594 F. Supp. 2d at 1190-91 (“[T]he ratio needs to be calculated with respect to each
13 Defendant separately. . . . Defendants were jointly and severally liable without apportionment for the
14 underlying harm their conduct caused It is inappropriate to apportion the harm between the two
15 Defendants. . . . [T]hat is Nevada law.”) (citing *BMW*, 517 U.S. at 575, and *Albert H. Wohlers &*
16 *Co.*, 969 P.2d at 961-62); *cf. Planned Parenthood*, 422 F.3d at 962 (“[A]rriving at the ratio on a
17 plaintiff-by-plaintiff, defendant-by-defendant basis respects the jury’s verdict. The jury awarded
18 punitive damages to each plaintiff from each defendant; it did not award punitive damages against
19 each defendant as one lump sum.”). The Court also notes that Compass and Blatt argued in favor of
20 the Court’s approach in their Rule 59 motion. (Doc. #2045 at 16-20) Indeed, the Court has a
21 “general obligation to preserve lawful jury awards when possible.” *See Passantino v. Johnson &*
22 *Johnson Consumer Prods., Inc.*, 212 F.3d 493, 510 (9th Cir. 2000).

23 Thus, the Court finds that the following ratios apply to the jury’s punitive damages awards:
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Defendant	Actual Or Potential Harm	Punitive Damages	Ratio
Compass	\$2,486,374.30 ⁶	\$750,000	0.3:1
Blatt	\$2,486,374.30 ⁷	\$50,000	0.02:1
TOTAL:	\$2,486,374.30 ⁸	\$800,000	0.3:1

Accordingly, because all those ratios are significantly less than 1 to 1, the jury's punitive damages awards are not unconstitutional. *See Planned Parenthood*, 422 F.3d at 963 ("We agree with the district court that ACLA's conduct is particularly reprehensible. . . . In these circumstances, a substantial award of punitive damages in relation to the actual harm caused will reasonably serve the interests of punishment and deterrence. Our constitutional sensibilities are not offended by a 9 to 1 ratio.").⁹

4. The jury's punitive damages awards are analogous to the civil penalties authorized by Nevada law for comparable cases.

The Court finds that defendants were on fair notice that their misconduct could subject them to the size of the jury's punitive damages awards. *See State Farm*, 538 U.S. at 416-17; *BMW*, 517

⁶ This figure is derived by adding: (i) the jury's compensatory damages award recoverable by plaintiffs in the total amount of \$17,521.23; (ii) plaintiffs' prejudgment interest award in the total amount of \$4,800.13 as of June 30, 2011; and (iii) plaintiffs' recoverable compensatory award of attorneys' fees, costs, and expenses in the total amount of \$2,464,052.94 (\$2,476,636.08 - \$12,583.14).

⁷ This figure is derived by adding: (i) the jury's compensatory damages award recoverable by plaintiffs in the total amount of \$17,521.23; (ii) plaintiffs' prejudgment interest award in the total amount of \$4,800.13 as of June 30, 2011; and (iii) plaintiffs' compensatory award of attorneys' fees, costs, and expenses in the total amount of \$2,464,052.94 (\$2,476,636.08 - \$12,583.14).

⁸ This figure is derived by adding: (i) the jury's compensatory damages award recoverable by plaintiffs in the total amount of \$17,521.23; (ii) plaintiffs' prejudgment interest award in the total amount of \$4,800.13 as of June 30, 2011; and (iii) plaintiffs' compensatory award of attorneys' fees, costs, and expenses in the total amount of \$2,464,052.94 (\$2,476,636.08 - \$12,583.14).

⁹ Compass and Blatt wrongly assert that, based on *Exxon Shipping Co.*, only a 1 to 1 ratio is constitutional. In *Exxon Shipping Co.*, the Supreme Court did not address what ratio between compensatory and punitive damages awards violates the Due Process Clause. Rather, the Supreme Court expressly limited its discussion to what ratio is appropriate for purposes of federal maritime common law. *See* 554 U.S. at 501-02 ("Today's enquiry differs from due process review because the case arises under federal maritime jurisdiction, and we are reviewing a jury award for conformity with maritime law, rather than the outer limit allowed by due process; we are examining the verdict in the exercise of federal maritime common law authority, which precedes and should obviate any application of the constitutional standard.").

1 U.S. at 583 (“[A] reviewing court engaged in determining whether an award of punitive damages is
2 excessive should accord substantial deference to legislative judgments concerning appropriate
3 sanctions for the conduct at issue.”) (internal quotations and citation omitted). Specifically, Nevada
4 law authorizes an award of punitive damages of: (i) three times the amount of compensatory
5 damages, if that amount exceeds \$100,000; or (ii) \$300,000, if the amount of compensatory damages
6 is less than \$100,000. *See* NEV. REV. STAT. § 42.005(1). Nevada law also permits clients (*i.e.*, the
7 Direct Lenders) of mortgage brokers (*i.e.*, Compass and Blatt) to sue for “punitive damages . . .
8 subject to the provisions of NRS 42.005” (as well as for actual and compensatory damages and
9 reasonable attorneys’ fees and costs) for violations of NEV. REV. STAT. §§ 645B.900 and 645B.910,
10 which make it unlawful to perform the services of a mortgage broker or mortgage agent without a
11 Nevada license (which defendants indisputably lacked). *See* NEV. REV. STAT. § 645B.930.
12 Nevada’s punitive damages caps are “analogous sanctions in determining the constitutionality of a
13 punitive damages award.” *See Swinton*, 270 F.3d at 820 (citing *BMW*, 517 U.S. at 583-85). Thus,
14 the jury’s punitive damages awards are constitutional because they comport with Nevada’s statutory
15 caps in that plaintiffs’ total compensatory damages are greater than \$100,000 and the jury’s punitive
16 damages awards are less than three times those compensatory damages. *See supra* section IV.D.3.
17 Accordingly, the Court denies Compass’s and Blatt’s request for a new trial or remittitur with
18 respect to the jury’s punitive damages awards.

19
20 **IT IS FURTHER ORDERED** that plaintiffs’ motion for an award of prejudgment interest
21 (Doc. #2050) is granted.

22 **IT IS FURTHER ORDERED** that plaintiffs’ motion for an award of attorneys’ fees, costs,
23 and expenses (Doc. ##2047, 2051) is granted.

24 **IT IS FURTHER ORDERED** that the Court’s order of civil contempt against Ms.
25 Cangelosi (Doc. #198) is stricken and expunged.

26 **IT IS FURTHER ORDERED** that Compass’s and Blatt’s Rule 50(b) and Rule 59 motions
27 (Doc. #2045) are denied.

1 **IT IS FURTHER ORDERED** that plaintiffs recover from Compass and Blatt the amount of
2 compensatory and punitive damages, prejudgment interest, post-judgment interest, attorneys' fees,
3 and costs as provided herein.

4 **IT IS FURTHER ORDERED** that the Plaintiff LLCs shall take nothing against Compass
5 and Blatt.

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7 DATED this 22nd day of October, 2013.

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10 UNITED STATES DISTRICT JUDGE
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1 Dated: July 10, 2013.

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3 AGREED AS TO FORM:

4 BICKEL & BREWER
5 ARMSTRONG TEASDALE

LAXALT & NOMURA, LTD.

6 */s/ Janet L. Chubb*

/s/ Daniel T. Hayward

7 By: _____

By: _____

8 Janet L. Chubb, Esq.
9 Michael J. Collins, Esq.
Robert M. Millimet, Esq.

Daniel T. Hayward, Esq.

Counsel for Defendants Compass Partners, LLC,
Compass USA SPE, LLC, and David Blatt

10 Counsel for Plaintiffs
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